



413 - Hot Topics in Nonprofit Law

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Faculty Biographies

Ona Dosunmu

Ona Alston Dosunmu is general counsel of The Brookings Institution, one of the nation's oldest and largest think tanks located in Washington, DC. Prior to becoming general counsel, Ms. Dosunmu worked in the foreign policy studies program at Brookings in a managerial capacity.

Prior to joining Brookings, Ms. Dosunmu practiced transactional law with the Washington, DC offices of major, international firms.

In addition to her professional experience working in the exempt organizations sector, she has served as a trustee for a small, independent school and as a member of the board of governors for a public charter school.

Ms. Dosunmu is a graduate of the Georgetown University Law Center.

Jeff Glassie

Jeffrey C. Glassie, is a partner in Pillsbury Winthrop Shaw Pittman's nonprofit organizations group in Washington, DC. Mr. Glassie represents associations and nonprofit organizations on a wide range of legal matters, including antitrust, tax, certification, accreditation, contracts, employment, merger, intellectual property, and corporate issues.

Mr. Glassie has significant experience in international legal issues and is the author of *International Legal Issues for Nonprofit Organizations*, published by the American Society for Association Executives (ASAE). He is also co-author with Jerry Jacobs of *Certification and Accreditation Law Handbook*, 2nd edition. Mr. Glassie is the former chair of the legal section council of ASAE and the Annual Legal Symposium; former chairman of the law and legislative committee of the Greater Washington Society of Association Executives; and former member of the ASAE international section council. Mr. Glassie serves as an instructor for the ASAE on-line electronic course on legal issues for associations and as faculty for the ASAE Virtual Law School. Mr. Glassie is also chair of the firm's well-being committee.

Mr. Glassie earned a B.A. from University of Virginia and his J.D. from George Washington University Law School, with honors.

Janine Greenwood

Janine Petit Greenwood is vice president and general counsel of American Student Assistance in Boston. American Student Assistance is the nonprofit administrator of the Federal Family Education Loan Program and employs 700 associates in its Boston offices. Her practice emphasizes areas of nonprofit corporate governance, information privacy, transactions, and intellectual property.

Prior to joining ASA, she was counsel to the New England operations of The Hearst Corporation concentrating on licensing, contract law, and First Amendment issues. Before that, she was counsel to media organizations in New York, Los Angeles, and Boston.

Ms Greenwood is a member of ACC's Nonprofit Organizations Committee, past president of ACC's New England Chapter, a fellow of the American Bar Foundation, and co-chair of the legal committee for the student loan industry. Active in community affairs, she has been a member of the Massachusetts Governor's Public Education Nominating Council, which advises on the boards of trustees of the Commonwealth's public higher education institutions. She has also served as chair of the advisory board of WGBH.

Ms. Greenwood did her undergraduate work at The University of Pittsburgh and a M.A. from the Graduate School of Journalism of Columbia University. She is a graduate of the Columbia University School of Law.

Britt Ide

Britt Ide is associate general counsel for Healthwise, a nonprofit health information organization in Boise, Idaho. In this capacity Ms. Ide helps set the course for effective and long lasting relationships between Healthwise and its partners. The reach of Healthwise content extends from Alaska to South Africa and nearly 90 million times a year people use Healthwise information to make better health decisions. More than 30 million Healthwise self-care handbooks have been distributed. Web portals such as WebMD and Yahoo Health, all of the top ten managed care organizations, government agencies, and hundreds of hospitals and employers use Healthwise information. In addition to managing Healthwise contracts, she also guides Healthwise on intellectual property, risk management, and employee relations.

Before Healthwise, Ms. Ide was a senior attorney for Albertson's, Inc. where she led intellectual property, advertising, marketing, and energy procurement legal issues. Prior to Albertsons, she served as counsel for Boise Cascade Corporation where she led complex transactions including timber, real estate, acquisitions, and divestitures and worked with securities, finance, and corporate governance. In addition, she served as a law clerk to the Honorable Stephen H. Anderson on the United States Court of Appeals for the Tenth Circuit. Her experience also includes work as engineer in energy policy, research, and innovative environmental technologies.

Ms. Ide has B.S. from The Ohio State University and a Master's from Montana State University. She earned her J.D. from the University of Utah College of Law.



**HOT TOPICS:
SECURITY BREACH PRIMER
FOR NONPROFITS**

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**In 2006, the Privacy Rights
Clearinghouse recorded 327 security
breach incidents**

A significant number of these were in the nonprofit sector:

- 52 involved higher education institutions
- 30 involved medical facilities

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Some Examples

- An American Red Cross employee in St. Louis used his access to information on 1,000,000 donors to begin a wave of identity theft
- The American Institute of CPA's lost private information on 330,000 members when a computer with an unencrypted hard drive was lost in transit
- Hackers accessed a University of Texas computer with information on 197,000 employees, faculty, students and applicants

Nonprofits can be the custodians of significant private and personal information

- Names of clients
- Medical information
- Personal information
- Staff records
- Donor credit card and banking information

The risks of not properly safeguarding this information can be huge!

- Costs of remedying the breach
 - Notification
 - Credit Monitoring
- Loss of Donors
- Loss of Clients
- Loss of Reputation

What do you do if a breach occurs?

- You need a plan and you need to comply with a patchwork of state and federal laws
- Federal laws include HIPPA for health care entities
 - GLB for financial institutions
 - FERPA for educational institutions
 - Laws in almost every state

**The contents of a typical state law
provide a good framework for
analyzing a breach and deciding
what actions are necessary**

A definition of what information is protected

Generally this is:

- **Name plus**
 - Social Security Number
 - Drivers license number
 - Credit card number
 - Bank account number (plus PIN in some cases)
 - Medical Information
 - Personal information

Who is covered?

Usually any entity conducting business in the state or any entity that has custody of information on state residents.

Note that state agencies have their own regulations and, if you trade information with a state agency, you may also be subject to those regulations.

Notice Procedure and Timing

Notice is usually required as soon as possible and without unreasonable delay unless delay is directed by law enforcement to facilitate investigations. Many states provide for a reasonable delay to determine the scope of the breach and restore integrity to the system.

If you are very lucky, your state will have an exception waiving the notice requirement if you (and/or law enforcement) can reasonably conclude that no harm is likely to occur. These include: Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Louisiana, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island and Wisconsin.

Means of notice vary but usually include individual written or electronic notice.

Encryption Safe Harbor

If the lost material is encrypted, notice is not required in many states.

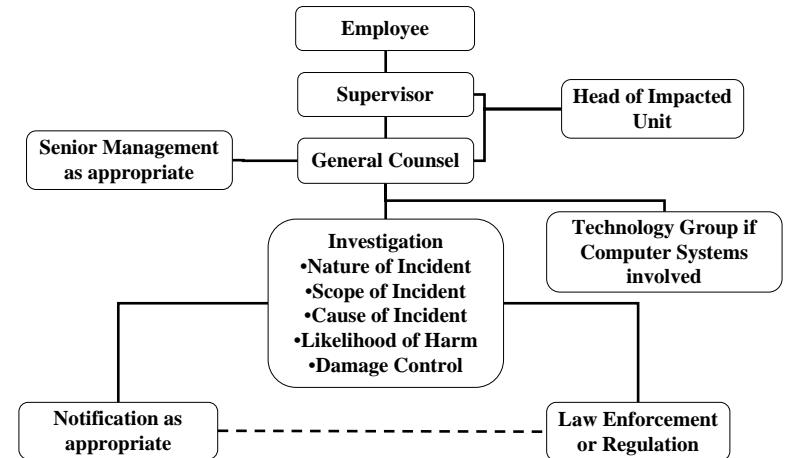
Private Cause of Action

States such as California, Delaware, Louisiana, Minnesota, New Hampshire, North Carolina, Rhode Island and Tennessee provide a private right of action for injured individuals.

Plaintiffs have also made claims under a negligence standard.

Conflicts Exemptions

If you represent an entity subject to GLB, HIPPA or similar federal law, you may be exempt from the state regulation or only the state notice requirements. However states such as Arkansas, Delaware and Rhode Island grant exemption only if the other regulations offer greater consumer protection.



Action Plan in place before an incident

- Identify your covered information
- Identify your vulnerabilities: physical, operational and technical
- Educate staff about confidentiality and have and enforce confidentiality policies
- Identify an internal manager responsible for security and breach response
- Invest in technical controls such as encryption
- Identify you regulators
- Insure vendors that work with you have adequate security policies

Managing Intellectual Property Risk



Risk Management in Intellectual Property

- Introduction – Intellectual Property (IP)
 - Attention it deserves – hot topic in economy
 - ⊗ Nonprofit financial constraints
 - ⊗ Small legal staffs
 - Checklist
 - ⊗ Assumes basic knowledge of IP law
 - ⊗ If not, www.acc.com/infopaks/ip.php

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Trademarks

- Protect your trademarks
 - Name and major long-term brands or slogans
 - ⊗ Federal registration – see *US PTO-Trademarks* at www.uspto.gov/main/trademarks.htm
 - ⊗ State registration – usually not needed
 - ⊗ Use trademarks correctly (see handout)
 - Avoid infringement
 - ⊗ Train organization
 - In-house counsel
 - ⊗ Trademark searches
 - ⊗ Police marks
 - ⊗ Domain names/cybersquatting

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Copyright

- Protect your organization
 - © 2007 *Your Organization Name*
 - Register important materials
 - U.S. Copyright Office at www.copyright.gov/circs/circ1.html
 - Statutory damages benefit
 - Avoid infringement
 - Train organization
 - Most online information is copyrighted
 - Beware of publications and reprints
 - Fair use exception narrow

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Licensing - Software

- Ensure adequate scope of licensed use
- Ensure indemnity for IP claims
 - Beware of modification language
- ACC resources
 - *Basics of Software Licensing* at www.acc.com/resource/v252
 - *Software Licensing Checklist* at www.acc.com/resource/v253

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Patent

- Consider publishing information
- Beware of patent trolls
 - Indemnity in contracts – be proactive
 - Claims - experienced legal counsel
 - Info at Patent Predators Slides at www.acc.com/resource/v155

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IP Counsel Selection

- Full service vs. boutique
 - Benefits to each
 - Organization's relationships
- Establish relationships
- Practical, experienced attorneys
 - IP and nonprofit
- Paralegals keep costs reasonable

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IP Counsel Selection

- Outside experts
 - Licensing brand to others
 - Standards, review
 - Responding to infringement claims
 - Trolls
 - Dealing with infringers
 - Litigation may be necessary
 - Patents
 - Technical legal area – changes quickly

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HOT TOPICS: NONPROFIT ORGANIZATION STRUCTURES, AFFILIATES, AND COMBINATIONS

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General Structure of Nonprofit Organizations

- Nonstock corporations
- Membership associations or charities
- Tax exempt under I.R.C. § 501(c)(3), (c)(4), and (c)(6)
- Complex structures to maximize legal compliance, risk management, efficiencies

Wide Range of Affiliates and Issues

- Main organization, including divisions
- Supporting organizations, including charitable foundations
- For-profit subsidiary
- Political action committee
- Allied organizations
- Affiliates/chapters – local, state, regional
- International affiliates
- Business forms – LLC, partnership, joint venture

Main “Parent” Organization

- Unincorporated association
- Nonprofit, nonstock corporation
- Tax exempt
- Articles of Incorporation
- Bylaws
- Policies and Procedures
- Divisions, sections, task forces
- Contracts with Affiliates/Chapters
- Spin off “subsidiaries” for tax, lobbying/political, and liability reasons
- Alliances

Supporting Organizations

- Typically a § 501(c)(3) supporting a § 501(c)(6), but can also support a § 501(c)(3)
- Usually no members
- Conducts charitable, educational, research activities
- Parent appoints majority or all of Board
- Section 509(a)(3) public charity status
- Often staffed by parent (UBIT issue management fees)
- Can receive tax deductible charitable contributions
- Note other non-(501)(c)(3) “subsidiaries”, e.g., certification

For-Profit Subsidiary

- Established as stock corporation
- Parent usually is sole stockholder
- Created to minimize tax exemption risks to parent
- Minimize liability risks (note: piercing corporate veil)
- Conducts unrelated activities, e.g., marketing or other business activities
- Often staffed by parent (note UBIT issue)
- Dividends not taxable to parent; but if > 50% stock owned by parent, royalties, interest, rent are taxable to parent

PAC's

- Political Action Committee, or separate segregated fund
- Usually connected to Section 501(c)(6) or (c)(4) within FEC rules
- Conduct political campaign activities, e.g., raise and disperse campaign contributions under FECA
- No members, but usually have bylaws and required to have treasurer (not usually incorporated)
- No contact with §501(c)(3) organizations

Allied Organizations

- Loose affiliations
- Sometimes contractual
- Not usually incorporated, but if long term LLC is an option
- Sharing of expenses
- Examples: legislative coalitions, research activities, trade show sponsorships

Affiliates/Chapters

- Authorized in parent bylaws (regional/state/local)
- Sometimes corporate status murky, best to clarify
- Can be separately incorporated (with tax exemption, Form 990, insurance, etc.) for liability protection)
- Or, unincorporated association
 - either separate, where chapter individuals liable
 - or part of parent -revenues/expenses on parent 990
- Group tax exemption available
- Should have charter/affiliation agreement providing for use of parent's name/logo
- Recommend policies and procedures to minimize risks, e.g., hotel and other contracts

International Affiliates

- Non-U.S. affiliates
- Recommend written affiliation agreement
- Can be like chapters, “sisters,” or members of umbrella organization
- Use and registration of intellectual property is important

Business Forms

- Used in business ventures
- Trade shows, publications, product development
- Joint venture and partnership similar – contractual in nature
- Limited Liability Companies – corporate protection, flexible “flow through” for tax purposes
- Tax Issues – exempt organizations must maintain “effective control” to ensure tax exempt treatment – some IRS guidance
- Certificate of Formation and operating agreement terms are important



Corporate Combinations

- Merger – automatic assumption of assets and liabilities; A merges into B
- Consolidation – same, but A and B into new C
- Transfer of assets – contractual transfer; not as clean
- All usually require Board and (often supermajority) member vote (except for recipient of transfer, no member vote)
- Due Diligence process
- Practical issues for approval paramount



HOT TOPICS: POLITICAL ACTIVITY AND EXEMPT ORGANIZATIONS

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Basic Rules for 501(c)(3)s . . .

- A 501(c)(3) may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.
 - Who's a candidate?
 - What's a public office?

Permissible 501(c)(3) activities . . .

- Issue advocacy
- Voter education/"Get Out the Vote" efforts
- Voter registration
- Candidate education

Issue Advocacy . . .

- Must be nonpartisan and related to exempt purpose
- Don't coordinate with a candidate or a party
- No express advocacy or "code words"
- Disclaimers are helpful

Voter Education . . .

- Again, touchstone here is a *nonpartisan, objective* presentation that does not appear to favor one candidate or party
 - Voter Guides
 - Debates and Appearances by Candidates
 - Scorecards

Voter Registration & “Get Out the Vote” Efforts . . .

- Don't refer to specific candidates or parties
- Don't suggest whom to vote for or which party to register with
- Make the service available to everyone

Practical Considerations . . .

- Does your organization have a policy and does it enforce it?
- Do you check the links on your website?
- What about making resources or facilities available to candidates?

How is “nonpartisan” defined?

- Booth at the state fair vs. phone bank
- Candidate appearance at historical society meeting vs. candidate’s sermon
- Newspaper ad vs. opinion piece in alumni newsletter vs. announcement in alumni newsletter

Generally speaking, a 501(c)(4) may . . .

- Engage in the same nonpartisan election-related activity that (c)(3)s may engage in, PLUS they may engage in some partisan political activities but such activities cannot be the primary activity and such activities may have tax consequences--the organization may have to file an IRS Form 1120-POL

So long as it's not the *primary* activity, (c)(4)s may . . .

- Endorse candidates
- Make statements in support or opposition to candidates to the (c)(4)'s members
- Create an affiliated 527 and/or separate segregated fund (connected PAC)

Under the FEC Rules, organizations generally may not . . .

- Engage in express advocacy for a candidate to the general public
- Coordinate communications with a party or candidate
- Make cash or in-kind contributions to candidates
- Exceptions for QNCs (Qualified Nonprofit Corporations)



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A few words about 527s and PACs . . .

- 527s vs. federal PACs (separate segregated funds)
- “Connected” vs. “nonconnected”
- Independent expenditures vs. contributions

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Hot Topics in Nonprofit Law: Risk Management in Intellectual Property By Britt Ide, Associate General Counsel, Healthwise, Incorporated

Introduction

Intellectual Property is a hot topic throughout the economy, but may not be given the attention it deserves by nonprofits, due to nonprofit missions, financial constraints, and small legal staffs. This quick overview is intended to give you a checklist of some of the basics of what in-house counsel should do to protect your nonprofit organization. This assumes that you have a basic knowledge of IP law. (If not, the ACC InfoPak "Patents, Trademarks, Copyrights and Trade Secrets: An Introduction To Intellectual Property For In-House Counsel" at <http://www.acc.com/infopaks/ip.php> is helpful.)

1. Trademarks
 - a. Are you protecting your main trademarks?
 - i. Protect your name and major, long-term brands or slogans
 1. Get federal registration; see US PTO-Trademarks at <http://www.uspto.gov/main/trademarks.htm>
 2. Usually don't need state registrations
 3. Use your trademarks correctly [see sample training document]
 - ii. Worry less about short-term, less important uses
 1. Probably don't spend money to register
 - b. Are you not infringing others' marks?
 - i. Periodically train your organization to not infringe
 - c. What can you do yourself without outside counsel?
 - i. Basic knockout searches of proposed trademarks
 1. Go to "Search" at USPTO link above
 2. Basic Google or other search engine
 - ii. Policing your marks
 1. At least do a quarterly Google or other search to see if anyone else is using your marks
 2. Many organizations will stop use if you contact them
 - iii. Domain names/cybersquatting
 1. Your trademarks are protected from unauthorized domain name use
 2. Use your policing strategy above
2. Copyright
 - a. Are you protecting your organization?
 - i. Use notice: "© 2007 YourOrgName" on your materials
 - ii. Register important materials that have medium to long life
 1. Easy process to register
 2. Details at U.S. Copyright Office Basics at <http://www.copyright.gov/circs/circ1.html>
 3. Benefit of statutory damages if registered
 - b. Are you infringing?
 - i. Periodically train your organization to not infringe [see sample training document]
 1. Most online information IS copyrighted
 2. Beware of use of publications, reprints
 3. Remember, the fair use exception is NARROW and does not cover most nonprofits
 - ii. Get permission for needed uses of copyrighted information
3. Licensing (software)
 - a. Ensure adequate scope of licensed use
 - b. Ensure indemnity for IP claims (beware of modification language)
 - c. See other ACC resources
 - i. Basics of Software Licensing at <http://www.acc.com/resource/v252>
 - ii. Software Licensing Checklist at <http://www.acc.com/resource/v253>
4. Patent
 - a. As a nonprofit, to avoid expense, consider publishing information to put in public domain (and prevent others from patenting)
 - b. Beware of patent trolls
 - i. Get indemnity in contracts to be proactive
 - ii. Get good, experienced counsel if you need to react to a troll claim

iii. More info at Patent Predators Slides at <http://www.acc.com/resource/v155>

5. Selecting outside IP counsel
 - i. Full service vs. IP boutique – benefits to each, depends on your firm relationships
 - ii. Establish relationships so that attorneys understand your mission
 - iii. Look for practical, experienced attorneys (with IP and nonprofits)
 - iv. Look for good use of paralegals in firm to keep costs reasonable
 - v. Recommend using outside experts for
 1. Licensing your brand to others (standards, review)
 2. Responding to infringement claims (especially trolls)
 3. Dealing with infringers of your organization's rights who don't respond to you—you may need to litigate occasionally to show that your organization is serious
 4. Anything related to patents (very technical legal area that changes quickly)

Simple Rules to Help Protect Your Intellectual Property

A **trademark** is any word (*Expedia.com*), phrase (*Can't beat the real thing*), symbol (think *Apple®* computer), device (*Pillsbury Doughboy*), package design (*Mrs. Butterworth's®* grandmother shaped bottle) or combination of these that helps consumers identify a product or service that distinguishes it from others in commerce. Even a sound (a succession of three distinct pitches: G3, E4, and C4 = NBC network chimes) or color combination can be a trademark. The term trademark is often used interchangeably to identify a trademark (the product) or service mark (the service provided). Remember: The more distinctive the trademark the better. And, use it or lose it!

Use trademarks distinctively from the surrounding text. CAPITALIZE **Bold type** *italicize*

Use proper trademark symbols. Place symbol immediately after the trademark. The symbol should appear at least once in each piece of printed matter and preferably when the trademark first appears.

® Commonly referred to as ("Circle-R")

The ® symbol alerts the public that the trademark is federally registered. Do not use the ® symbol if the mark is not registered with the United States Patent and Trademark Office. If the trademark is not registered, use the *TM* or *SM* (superscript) symbol. These symbols represent to the public that the trademark is not (yet) registered and you are asserting common law rights to the trademark.

Use trademarks as an adjective followed by a descriptive noun. Trademarks are not verbs. Examples:

- HEALTHWISE products help people make better health decisions. (GOOD - adjective noun)
- I went rollerblading. (BAD – verb)
- Nicole skates with Rollerblade in-line skates. (GOOD – verb)
- Marsha enjoys Cherry Cokes. (BAD – noun)
- Marsha enjoys a Cherry Coke drink when it is hot. (GOOD – adjective)

Never use your (or others) trademark in jokes, puns, or in a derogatory fashion.

Use trademarks correctly and consistently. Once a trademark becomes generic (used as a verb), the owner may no longer be able to protect the mark. Example: the word "Kleenex" should not be used for "tissue." The correct use is Kleenex® tissue.

A Proprietary Rights Notice should be included whenever possible. Example: Coke Zero is a registered trademark of the Coca-Cola Company.

Monitor use of similar trademarks by others. Consider using a professional watching service or periodically perform basic internet searches using several search engines. As the trademark owner, you should be able to demonstrate that you proactively protect your trademark rights or you may be subject to a third-party challenge and could lose your trademark.

A **copyright** is a form of property that protects creative works in any fixed medium of expression. Copyright does not protect ideas, methods, basic facts, or purely functional objects.

Copyright protection begins the moment it is fixed in a perceivable medium. However, unless the work is registered with the U.S. Copyright Office, statutory damages and attorneys fees cannot be collected in a case of infringement. It is inexpensive (\$45 per filing) to register with the U.S. Copyright Office.

Although not required, use an attribution statement to put the public on notice that the work is copyright protected. Example: © [Year] [Your Organization]. Copying any portion of this material is not permitted without express written permission of [Organization].

Be careful not to infringe the copyrights of others. Innocent copying is NEVER a defense. Infringement can be very costly, both monetarily and to your organization's reputation. Always seek permission from the copyright owner if you want to use another party's work and cite your source.

Copyright protection has two NARROW exceptions, but these should be rarely relied on (make sure your use is covered by these areas):

Fair Use: For purposes of criticism, commentary, news reporting, education, scholarship, or research is generally not considered infringement (see § 107 of Copyright Act)

Public Domain: Just because something is on the Internet does NOT mean it is in the public domain. Information found on the Internet may be copied freely if the information is:

- Created by the federal government (make sure it is)
- Copyright is expired (requires research)
- Copyright has been abandoned by the holder (requires research)

... issued to Taxpayer by the same company in the same calendar year. The ruling in this case would be the same if, instead of individually issued MECs, the Original Contracts and New Contracts were evidenced by certificates that were issued under a group contract or master contract and that were treated as separate contracts for purposes of §§ 417(b), 7702, and 7702A.

HOLDING

If a taxpayer that owns multiple modified endowment contracts (MECs) issued by the same insurance company in the same calendar year exchanges some of those MECs for new MECs issued by a second insurance company, the new contracts are not required to be aggregated with the remaining original contracts under § 72(e)(12).

DRAFTING INFORMATION

The principal author of this revenue ruling is Melissa S. Bradley of the Office of Associate Chief Counsel (Financial Institutions & Programs). For further information regarding this revenue ruling, contact Ms. Luzzo at (202) 22-3970 (not a toll-free call).

Section 430.—Minimum Funding Standards for Single-Employer Defined Benefit Pension Plans

Provisions with respect to application of the respective funding rules on automatic premium rates under sections 430(b)(3)(C) of the Code and section 303A(c)(1) of the Employee Retirement Income Security Act of 1974 are set forth. See Rev. Rul. 2007-41, page 1433.

Section 501.—Exemption From Tax on Corporations, Certain Trusts, etc.

28-CFR 1.204(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals.

Exempt organizations; political campaigns. This ruling provides 21 examples illustrating the application of the facts and circumstances to be considered in determining whether an organization exempt from income tax under section 501(c) of the Code as an organization described in section 501(c)(3) has participated in, or intervened in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Rev. Rul. 2007-41

Organizations that are exempt from income tax under section 501(c) of the Internal Revenue Code as organizations described in section 501(c)(3) may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

ISSUE

In each of the 21 situations described below, has the organization participated or intervened in a political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3)?

LAW

Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(b)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(c)(3)(ii) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)-1(c)(3)(iii) of the regulations defines an "action" organization as an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" is defined as an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. The regulations further provide that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.

Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case. For example, certain "voter education" activities, including preparation and distribution of certain voter guides, conducted in a non-partisan manner may not constitute prohibited political activities under section 501(c)(3) of the Code. Other so-called "voter education" activities may be proscribed by the statute. Rev. Rul. 78-248, 1978-1 C.B. 154, contrasts several situations illustrating when an organization that publishes a compilation of candidate positions or voting records has or has not engaged in prohibited political activities based on whether the questionnaire used to solicit candidate positions or the voters guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. See also Rev. Rul. 80-282, 1980-2 C.B. 173, amplifying Rev. Rul. 78-248 regarding the timing and distribution of voter education materials.

The presentation of public forums or debates is a recognized method of educating the public. See Rev. Rul. 66-256, 1966-2 C.B. 210 (nonprofit organization formed to conduct public forums at which lectures and debates on social, political, and international matters are presented qualifies for exemption from federal income tax under section 501(c)(3)). Providing a forum for candidates is not, in and of itself, prohibited political activity. See Rev. Rul. 74-574, 1974-2 C.B. 160 (organization operating a broadcast station is not participating in political campaigns on behalf of public candidates by providing reasonable amounts of air time equally available to all legally qualified candidates for election to public office in compliance with the reasonable access provisions of the Communications Act of

1934). However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate. This could be done, for example, through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office. See Rev. Rul. 86-95, 1986-2 C.B. 73 (organization that proposes to educate voters by conducting a series of public forums in congressional districts during congressional election campaigns is not participating in a political campaign on behalf of any candidate due to the neutral form and content of its proposed forums).

ANALYSIS OF FACTUAL SITUATIONS

The 21 factual situations appear below under specific subheadings relating to types of activities. In each of the factual situations, all the facts and circumstances are considered in determining whether an organization's activities result in political campaign intervention. Note that each of these situations involves only one type of activity. In the case of an organization that combines one or more types of activity, the interaction among the activities may affect the determination of whether or not the organization is engaged in political campaign intervention.

Voter Education, Voter Registration and Get-Out-the-Vote Drives

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

Situation 1. B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. B is not engaged in political campaign intervention when it operates this voter registration booth.

Situation 2. C is a section 501(c)(3) organization that educates the public on environmental issues. Candidate G is running for the state legislature and an important element of her platform is challenging the environmental policies of the incumbent. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, C's representative tells the voter about the importance of environmental issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive.

Individual Activity by Organization Leaders

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or in official functions of the organization.

Situation 3. President A is the Chief Executive Officer of Hospital J, a section

501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President A, who have personally endorsed Candidate T, Candidate T publishes a full page ad in the local newspaper listing the names of the five leaders. President A is identified in the ad as the CEO of Hospital J. The ad states, "Titles and affiliations of each individual are provided for identification purposes only." The ad is paid for by Candidate T's campaign committee. Because the ad was not paid for by Hospital J, the ad is not otherwise in an official publication of Hospital J, and the endorsement is made by President A in a personal capacity, the ad does not constitute campaign intervention by Hospital J.

Situation 4. President B is the president of University K, a section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled "My Views." The month before the election, President B states in the "My Views" column, "It is my personal opinion that Candidate U should be reelected." For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the "My Views" column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K.

Situation 5. Minister C is the minister of Church L, a section 501(c)(3) organization and Minister C is well known in the community. Three weeks before the election, he attends a press conference at Candidate V's campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Because Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church L, his actions do not constitute campaign intervention by Church L.

Situation 6. Chairman D is the chairman of the Board of Directors of M, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of M shortly before the election, Chairman D spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, "It is important that you all do your duty in the election and vote for Candidate W." Because Chairman D's remarks indicating support for Candidate W were made during an official organization meeting, they constitute political campaign intervention by M.

Candidate Appearances

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.

In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the

manner of presentation for both speakers is otherwise neutral.

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel;
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address, if elected to the office sought and are of interest to the public;
- Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed;
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization; and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Situation 7. President E is the president of Society N, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President E invites the three Congressional candidates for the district in which Society N is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do not constitute political campaign intervention.

Situation 8. The facts are the same as in Situation 7 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in

his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention.

Situation 9. Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister F invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention.

Candidate Appearances Where Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non-political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization

makes any mention of his or her candidacy or the election;

- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

Situation 18. Historical society *P* is a section 501(c)(3) organization. Society *P* is located in the state capital. President *G* is the president of Society *P* and consistently acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor *Y*, a candidate, attends a meeting of the historical society. President *G* acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor *Y*." President *G* makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. Society *P* has not engaged in political campaign intervention as a result of President *G*'s actions.

Situation 11. Chairman *H* is the chairman of the Board of Hospital *Q*, a section 501(c)(3) organization. Hospital *Q* is building a new wing. Chairman *H* invites Congressman *Z*, the representative for the district containing Hospital *Q*, to attend the groundbreaking ceremony for the new wing. Congressman *Z* is running for re-election at the time. Chairman *H* makes no reference in her introduction to Congressman *Z*'s candidacy or the election. Congressman *Z* also makes no reference to his candidacy or the election and does not do any political campaign fundraising while at Hospital *Q*. Hospital *Q* has not intervened in a political campaign.

Situation 12. University *X* is a section 501(c)(3) organization. *X* publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter. After receiving an update letter from Alumnus *Q*,

X prints the following: "Alumnus *Q*, class of 'XX is running for mayor of Metropolis." The newsletter does not contain any reference to this election or to Alumnus *Q*'s candidacy other than this statement of fact. University *X* has not intervened in a political campaign.

Situation 13. Mayor *G* attends a concert performed by Symphony *S*, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor *G* is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of *S*'s board addresses the crowd and says, "I am pleased to see Mayor *G* here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor *G* in November as he has supported us." As a result of these remarks, Symphony *S* has engaged in political campaign intervention.

Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Situation 14. University *O*, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State *V* shortly before an election in which Senator *C* is a candidate for nomination in a party primary. Senator *C* represents State *V* in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State *V* residents to attend college, but Senator *C* has opposed similar measures in the past. The advertisement ends with the statement "Call or write Senator *C* to tell him to vote for S. 24." Educational issues have not been raised as an issue distinguishing Senator *C* from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and iden-

tifies Senator *C*'s position on the issue as contrary to *O*'s position, University *O* has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator *C*, education issues have not been raised as distinguishing Senator *C* from any opponent, and the timing of the advertisement and the identification of Senator *C* are directly related to the specifically identified legislation. University *O* is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator *C*, is an officeholder who is in a position to vote on the legislation.

Situation 15. Organization *R*, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement touting an increase in state funding for public education in State *X*, which requires a legislative appropriation. Governor *E* is the governor of State *X*. The radio advertisement is first broadcast on several radio stations in State *X* beginning shortly before an election in which Governor *E* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization *R* on the same issue. The advertisement cites numerous statistics indicating that public education in State *X* is underfunded. While the advertisement does not say anything about Governor *E*'s position on funding for public education, it ends with "Tell Governor *E* what you think about our under-funded schools." In public appearances and campaign literature, Governor *E*'s opponent has made funding of public education an issue in the campaign by focusing on Governor *E*'s ven of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State *X* legislature on state funding of public education. Organization *R* has violated the political campaign prohibition because the advertisement identifies Governor *E*, appears shortly before an election in which Governor *E* is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization *R* on the same issue, is not timed to

coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor *E*.

Situation 16. Candidate *A* and Candidate *B* are candidates for the state senate in District *W* of State *X*. The issue of State *X* funding for a new mass transit project in District *W* is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate *A* supports funding the new mass transit project. Candidate *B* opposes the project and supports State *X* funding for highway improvements instead. *P* is the executive director of *C*, a section 501(c)(3) organization that promotes community development in District *W*. At *C*'s annual fundraising dinner in District *W*, which takes place in the month before the election in State *X*, *P* gives a lengthy speech about community development issues including the transportation issues. *P* does not mention the name of any candidate or any political party. However, at the conclusion of the speech, *P* makes the following statement, "For those of you who care about quality of life in District *W* and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District *W*. Use that power when you go to the polls and cast your vote in the election for your state senator." *C* has violated the political campaign intervention as a result of *P*'s remarks at *C*'s official function shortly before the election, in which *P* referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis;
- Whether the good, service, or facility is available only to candidates and not to the general public;
- Whether the fees charged to candidates are at the organization's customary and usual rates; and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Situation 17. Museum *K* is a section 501(c)(3) organization. It owns a historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum *K* has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum *K* rents the hall on a first come, first served basis. Candidate *P* rents Museum *K*'s social hall for a fundraising dinner. Candidate *P*'s campaign pays the standard fee for the dinner. Museum *K* is not involved in political campaign intervention as a result of renting the hall to Candidate *P* for use as the site of a campaign fundraising dinner.

Situation 18. Theater *L* is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater *L* has never rented its mailing list to a third party. Theater *L* is approached by the campaign committee of Candidate *Q*, who supports increased funding for the arts. Candidate *Q*'s campaign committee offers to rent Theater *L*'s mailing list for a fee that is comparable to fees charged by other similar organizations. Theater *L* rents its mailing list to Candidate *Q*'s campaign committee. Theater *L* declines similar requests from campaign committees of other candidates. Theater *L* has intervened in a political campaign.

Web Sites

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information,



They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

A web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

Situation 19. M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that

includes all candidates for a particular office.

Situation 20. Hospital N, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital N, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital N describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that disease, and articles about treatment programs. This section includes a link to an article on the web site of O, a major national newspaper, praising Hospital N's treatment program for the disease. The page containing the article on O's web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital N has not intervened in a political campaign by maintaining the link to the article on O's web site because the link is provided for the exempt purpose of educating the public about Hospital N's programs and neither the context for the link, nor the relationship between Hospital N and O nor the arrangement of the links going from Hospital N's web site to the endorsement on O's web site indicate that Hospital N was favoring or opposing any candidate.

Situation 21. Church P, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. R, a member of the congregation of Church P, is running for a seat on the town council. Shortly before the election, Church P posts the following message on its web site, "Lend your support to R, your fellow parishioner, in Tuesday's election for town council." Church P has intervened in a political campaign on behalf of R.

HOLDINGS

In situations 2, 4, 6, 9, 13, 15, 16, 18 and 21, the organization intervened in a political campaign within the meaning of section 501(c)(3). In situations 1, 3, 5, 7, 8, 10, 11, 12, 14, 17, 19 and 20, the organization did not intervene in a political campaign within the meaning of section 501(c)(3).

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith Kindell of Exempt Organizations, Tax Exempt and Government Estates Division. For further information regarding this revenue ruling, contact Ms. Kindell at (202) 283-8964 (not a toll-free call).

Section 707.—Transactions Between Partner and Partnership

24 CFR 1.307-1. *Transactions between partner and partnership.*

Partnership property; transfer. This ruling concludes that a transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) of the Code is a sale or exchange under section 1001, and not a distribution under section 731.

Rev. Rul. 2007-40

ISSUE

Is a transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) a sale or exchange under section 1001, or a distribution under section 731?

FACTS

Partnership purchased Blackacre. For \$5000, A, a partner in Partnership, is entitled to a guaranteed payment under section 707(c) of \$8000. Subsequently, when the fair market value of Blackacre is \$8000 and Partnership's adjusted basis in Blackacre is \$5000, Partnership transfers Blackacre to A in satisfaction of the guaranteed payment to A.

Election Year Activities for 501(c)(4) Social Welfare Organizations

501(c)(4) organizations have fewer tax law restrictions than 501(c)(3) organizations with regard to political activity. Provided election activity is not the primary function of the 501(c)(4), they can participate in more partisan election-related activity under tax law than 501(c)(3)s. However, 501(c)(4)s must also be aware of their obligations under federal and state election law.

501(c)(4)s MAY:

- engage in all of the nonpartisan voter education activity that a 501(c)(3) can engage in
- engage in unlimited lobbying, including work on ballot measures
- endorse federal candidates for office to the organization's membership and share the endorsement with the organization's press list
- expressly advocate for a federal candidate's election or defeat when communicating with the organization's membership
- in some states, make cash or in-kind contributions to state or local candidates
- create an affiliated 527 organization (more commonly known as a political action committee)

501(c)(4)s MAY NOT:

- make communications to the general public that include express advocacy for a federal candidate
- make cash or in-kind contributions to federal candidates
- coordinate communications with a federal candidate or party
- engage in electoral activity as the organization's primary activity

Election Year Activities for and 527 Political Action Committee

527 organizations, or political action committees, are established to specifically engage in partisan electoral activities. A 501(c)(4) can pay for the administrative costs of establishing an affiliated federal 527 organization.

527s MAY:

- engage in electoral activity as its primary activity
- endorse candidates for office and share their endorsement with the general public
- make cash or in-kind contributions to a candidate for office (with certain limitations)
- conduct targeted voter education and voter registration activity
- conduct voter education for an electoral purpose

527s MAY NOT:

- engage in lobbying activity without incurring a tax on the amount spent on lobbying

Note: This handout provides general guidelines only, and is intended to serve as an overview. Because the application of law is fact-sensitive and context is critical, it should not be relied upon as legal advice. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.



Election Activities of Individuals Associated with 501(c)(3) Organizations

The prohibition on partisan political campaign activity does not apply to the activities of officers, directors, or employees acting in their individual capacity. Staff may work on political campaigns outside work hours, or using their available leave time. However, leaders and volunteers may not use the facilities, equipment, personnel, or other resources of the organization to provide support or oppose a candidate or campaign.

Below are examples of instances when the actions of board members, officers, or employees can be seen as actions on behalf of the organization in a political campaign:

1. The director of an organization makes statements biased for or against candidates for public office during an event sponsored by the organization or in any of its publications.
2. An employee of an organization wears a political button at a public event or function when acting on behalf of the organization.
3. An employee gives the organization's mailing list to a candidate.
4. An organization permits a candidate to use the organization's office for a phone bank without charge.
5. A board of directors thanks an Executive Director for her work on behalf of a candidate.

An organization can help to protect itself from violating these laws by:

1. Requiring officers or employees acting as individuals engaged in partisan political activity to clearly state that they are acting in their individual capacity, not on behalf of the organization, and that any reference to their work for the organization is made only for identification purposes.
2. Notify employees of their limitation on use of their staff time and office facilities. Time sheets should reflect that an employee took leave to participate in partisan activity.
3. Disavowing any partisan actions of officials or employees that appear to be authorized by the organization, taking steps to ensure such actions are not repeated. Such a disavowal should be in writing and done in a timely manner.

Note: This handout provides general guidelines only, and is intended to serve as an overview. Because the application of law is fact-sensitive and context is critical, it should not be relied upon as legal advice. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.

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Permissible Election Activities Checklist

501(c)(3) public charity organizations are strictly forbidden from engaging in any political activity in support of or in opposition to any candidate for public office. The IRS will consider all of the facts and circumstances surrounding an activity to determine whether the activity violates this prohibition. However, 501(c)(3) public charity organizations can engage in nonpartisan voter education activity and in a limited amount of lobbying.

501(c)(3)s MAY:

- engage in limited lobbying, including work on ballot measures
- conduct nonpartisan public education and training sessions about participation in the political process
- educate all of the candidates on public interest issues
- publish legislative scorecards (with certain restrictions)
- prepare candidate questionnaires and create voter guides (with certain restrictions)
- canvass the public on issues
- sponsor candidate debates (with certain restrictions)
- rent at fair market value mailing lists and facilities to other organizations, legislators, and candidates (with certain restrictions)
- conduct nonpartisan get-out-the-vote and voter registration drives
- establish a controlled 501(c)(4) organization
- work with all political parties to get its positions included on the party's platform (with certain restrictions)

501(c)(3)s MAY NOT:

- endorse candidates for public office
- make any campaign contributions
- make expenditures on behalf of candidates
- restrict rental of their mailing lists and facilities to certain candidates
- ask candidates to sign pledges on any issue (tacit endorsement)
- increase the volume or amount of incumbent criticism as election time approaches
- publish or communicate anything that explicitly or implicitly favors or opposes a candidate

Note: This handout provides general guidelines only, and is intended to serve as an overview. Because the application of law is fact-sensitive and context is critical, it should not be relied upon as legal advice. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.

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Resources for Preventing and Assessing Information Security Incidents

Education and Monitoring

The first step for counsel in dealing with any potential information security incident is learning about it. If your staff is not sensitized about their obligations to safeguard information, they will not be sensitized to report to you when information is potentially compromised. Information Security needs to be treated like any other compliance program.

Step 1: Asses the Nonpublic Information Used by Your Organization

The guidelines used by financial institutions can supply a standard of “best practice.” You are looking for physical, operational and technological risks and establishing policies to mitigate these risks.

Step 2: Draft and Publicized Policies on Information Security

Attached Sample Policies:

- “Acceptable Use Policy” for technology resources including Information Security protections
- “Clean Desk and Secure Print Policy” to safeguard hard copies of information
- “Vendor Selection Policy” to ensure vendors maintain information security

Step 2: Educate

Our best success has been to educate employees through lunchtime seminars on protecting their own information from identity theft. This underlines the importance of protecting donor and client information. Excellent resources are available at FTC.gov and

Step 3: Monitor Compliance

Managers should be held accountable for enforcement but we have also used our own staff to do “sweeps” of the office during working and non-working hours. We designed a “parking ticket” which we left on desks with unsecured information.

Step 4: Reward and Discipline

We have used our internal “spot bonus” program to give small monetary rewards to employees who find unsecured information and funded donut breakfasts for departments who develop outstanding internal security procedures. Our Human Resources department has disciplined information security offenders.

Assessing an Incident

Step 1: Determining the Scope

This involves the classic “who, what, when, where and how” but is rarely simple. An employee loses a stick drive with client data: how do you determine precisely what data was on the drive? You discover that an employee who accepts credit card donations used a donor’s information to commit credit card fraud: id this a single incident or did this employee engage in this practice over months?

Step 2: Immediate Remediation

Are there any steps that need to be taken immediately to stop continuing damage? Donor credit card information was accidentally posted on your web site: has it been promptly removed and removed from any other places the information had been cached?

Step 2: Determining the Risk of Harm

Making a determination of a risk of harm can determine how swiftly you must act. Client information has been mixed up in the mailing room and sent to the wrong hospitals: the risk of harm to the client is lower and your priority can be recovering the information rather than notification. Print outs of donor credit card information, names and addresses was put in the trash unshredded, the bags burst and the paper is blowing through the streets: You would want to focus on who to notify and publicity implications.

Step 3: Examining Applicable Law

What federal and state laws are applicable? This will determine what agency or authority you have to notify, what notification requirements you have for individuals, and how notice should be made.

Information of Federal Law is available at:

<http://www.ftc.gov/bcp/edu/microsites/idtheft/business/safeguards.html>

A helpful, frequently updated chart of state laws is available at:

A comprehensive California guide to "Recommended Practices on Notice of Security Breach Involving Personal Information" is available at:
<http://www.privacy.ca.gov/recommendations/secbreach.pdf>

Step 4: Individual Notification

Notification should be done in consultation with law enforcement so that you do not disrupt any ongoing investigation. If notification delay is recommended, it is advisable to get this recommendation in writing to protect from later public questioning about why notice was delayed.

Sample notification letters are available at:
<http://www.ftc.gov/bcp/edu/microsites/idtheft/business/data-breach.html>

If lost information includes social security numbers you should consider also notifying major credit bureaus:

Equifax
 U.S. Consumer Services
 Equifax Information Services, LLC.
 Phone: 678-795-7971
 Email: businessrecordsecurity@equifax.com

Experian
 Experian Security Assistance
 P.O. Box 72
 Allen, TX 75013
 Email: BusinessRecordsVictimAssistance@experian.com

TransUnion
 Phone: 1-800-372-8391

SAMPLE
Acceptable Use Policy for Networks and Computer Systems
(Including Information Security Protections -- Highlighted)

This policy applies to all users of The Company's computing and network resources including, but not limited to, employees and contractors. You must read and accept this policy before you will be allowed access to any of the computing and network resources. "Computing and Network Resources" includes all computer equipment and the software, programs, data bases and functions accessible thereby, including but not limited to electronic mail, the Internet, telephone, voicemail and all telecommunications facilities. All users are required to follow these rules. Violations of this policy can subject the offender to disciplinary action (including termination of employment) and, in some cases, to state or federal prosecution.

ALL COMPANY COMPUTING AND NETWORK RESOURCES ARE DEEMED COMPANY PROPERTY AND ARE TO BE USED BY YOU FOR LEGITIMATE BUSINESS PURPOSES ONLY. You may, from time to time, use some of these resources for limited personal communications, so long as your use does not interfere with your work or with Company business operations, and does not violate Company policies or applicable law. Company management at all times reserves the right to set guidelines regarding any use of computing and network resources and/or to terminate the right to use such resources for personal use. The Company also reserves the right to monitor, at the Company's sole discretion and without further notice to you, your use of all computing and network resources to determine your compliance with this policy. Such monitoring may include, but is not limited to, tracking usage, quality control, systems checks, productivity reviews, and investigations of possible misuse.

THE USE BY YOU OF COMPANY COMPUTING AND NETWORK RESOURCES CONSTITUTES YOUR CONSENT TO THIS MONITORING AND IS CONDITIONED UPON YOUR ADHERING TO THIS AND RELATED COMPANY POLICIES. Violation of these policies may subject associates to disciplinary action up to and including termination.

All Company information must be protected according to the requirements of the Company Information Classification and Protection Security Standard which can be found at (internal URL)

The security of Company Computing and Network resources, the safeguarding of the privacy of our donors, employees and clients and the protection of The Company's intellectual property is the personal responsibility of each associate.

1. You are not to give out your password, user ID or access codes to any other person, at any time, for any reason.
- 2- You may not allow anyone else to access your account or use any account other than your own at any time or for any reason. MIS can provide access to other associates' data if required and properly authorized.
3. You will not change any security settings or system configuration that may interfere with the regular business operations of The Company.
4. All information stored on Company-owned computer systems is the sole property of The Company. You will use all such resources in a manner that protects the security and privacy of this information and will not engage in any activity that could endanger the security of information on Company computers or networks.
5. You may not download Company data or information onto portable media such as a disk or memory stick unless you have specifically been given the right to engage in such activity by your supervisor. You are personally responsible for the secure custody and transport of such data or information.

6. In the event you are permitted to access Company computing and network resources from your home or other remote location, you must strictly adhere to all procedural and technical requirements established by The Company for remote users.
7. You will immediately report any suspected security breach or loss of any Company computing equipment or data files to your supervisor and to the General Counsel.

Maintaining the technical integrity of Company Technical and Computing Resources is critical to the operation of our business and the provision of service to our clients. Each associate has an obligation not to engage in activities that could interfere with this primary business activity.

8. You may not use Company computing or network resources for downloading or sharing large photographic files, music, movies or similar large files that may strain network capacity.
9. You may not abuse your electronic mail privileges. The forwarding of electronic chain letters, distributing personal solicitations (even for charitable causes) and similar activities are examples of the abuse of email privileges.
10. The Company's computer systems, network, and telecommunications facilities and services are to be used for Company business purposes only and not for the benefit of private individuals or other organizations.
11. You may not attach any personally owned equipment of any kind to the Company computer network or to a Company computer, including, but not limited to, MP3 players, i-pods and digital cameras. Equipment such as speakers, web cams or microphones may only be installed after such devices have been approved by your supervisor and Technical Support and then may only be installed by Technical Support.
12. You may not engage in "instant messaging" on any Company computer or download software to enable instant messaging.

Company Technical and Computing Resources are never to be used for activities which would violate the intellectual property rights of others or otherwise violate law.

13. All non-Company-developed software must be obtained and installed by Technical Support. At the discretion of the Technical Support Manager, Systems personnel may install legally obtained licensed software on computers in their environment.
14. Use of peer-to-peer file sharing software for file sharing is prohibited. You may not use Company computing or network resources for any activity that does or may violate the intellectual property rights of others.
15. You may not download, stream, or store any music or entertainment programming using Company computing or network resources and may not attach any devices designed for music or entertainment programming such as an MP3 player or an i-pod to an Company computer.

The Company is committed to providing a workplace where all of its associates are free from disparagement and harassment. Company Computing and Technical Resources may not be used in a manner that would harass or disparage others or violates any other Company policy.

16. You may not access or participate in any form of pornography, profanity or harassment on any of the computer systems, networks or telecommunications facilities owned and/or operated by The Company.
17. You may not use Company computing or network resources to engage in gambling or games of chance or skill; to access, download or store any content of a sexual nature; to access or download or store any content which disparages any racial, ethnic religious or other group in violation of The Company's policies; or to engage in any illegal activity.

At the time of your termination, you are to relinquish all files and information stored on Company-owned computer systems in an unencrypted, non-password protected and readily accessible form. You will not continue to access any Company computing or network resources after your termination.

Policy Sample

Clean Desk and Secure Printer Policy	
<i>Affected Departments</i>	All
<i>Background</i>	Various privacy laws including state laws, Gramm-Leach Bliley and the FACT Act require companies that handle non-public personal information (NPI) such as Social Security numbers, bank account numbers, names, addresses, personal information, medical information and birthdates to adopt measures to ensure that this information is secure. Organizations can face serious legal, business and public relations consequences if such information exposed, lost or used inappropriately by an unapproved party.
<i>Current Policy</i>	<p>This policy is intended to be a reminder that all Company employees must take the following steps to ensure that the NPI of our clients is kept as secure as possible:</p> <ul style="list-style-type: none"> All documents such as contracts, screen prints, checks, account statements, school certifications, emails, etc. that contain NPI or other Company Proprietary and Confidential information must only be handled in paper form when absolutely necessary All above paper documents must be locked in desks or cabinets when not in use and when the employee is not seated at their desk All documents must be shredded or filed and locked properly once the employee has finished with it. All computers must be locked when employees leave their desk. Just remember, "Before you leave your seat press control, alt, delete." The "secure print" option must be used when printing documents containing NPI after regular business hours The manager or supervisor from each department must assign an employee in their department who is required to review any unsecured printing and faxing areas at the close of business daily to ensure that all Company Proprietary information, including NPI, is secure. It is acceptable for a manager or supervisor to assign themselves the aforementioned responsibility. All fax machines located in unsecured areas must have the print function disabled after normal business hours.
<i>Effective Date</i>	Immediate
<i>Trigger Event</i>	N/A
<i>Partners Affected</i>	Clients Donors
<i>Basis</i>	State Laws Other information security rules and regulations.
<i>System Changes</i>	None
<i>Contact</i>	<ul style="list-style-type: none"> _____, General Counsel, ext. ____

Sample Policy

Vendor Selection	
<i>Affected Departments</i>	All. Any department that engages a vendor to provide service or products to Company through which that vendor will receive private information about clients, donors or employees is impacted.
<i>Background</i>	Because we are responsible under state and federal law for non-public personal information concerning donors and clients, we to have an information security program to protect this information, The Company can only hire vendors which have an information security program that protects the information shared with them. The Company must also prevent a vendor from using sensitive information for any purpose other than the reason for which it was shared.
<i>Current Regulations</i>	Cite Applicable Laws
<i>Change</i>	<p>Information security should always be a concern when evaluating a vendor that will receive borrower information.</p> <p>In conjunction with Corporate Counsel, business users must integrate information security into their vendor evaluation process. Specifically, vendors will need to provide documentation about their information security procedures and agree contractually to use non-public information only for the specific reasons for which it was shared.</p> <p>Business users will also be required to keep a list of all third party service providers with which they share non-public information so that Company management can keep track of vendor evaluations.</p>
<i>Effective Date</i>	May 23, 2003.
<i>Partners Affected</i>	All vendors
<i>System or Process Changes</i>	Changes may be required when specific vendors are hired in order to make sure non-public information is always secure. For example, a system or process change might be required to securely exchange data with a potential vendor. Changes might also be required when a lender evaluates us as a service provider.
<i>Contact</i>	<p>_____</p> <p>General Counsel Ext. _____</p>

Political Activity Outline

- I. Objective: To give resources to members to enable them to issue-spot and do a risk assessment of political-activity issues when they arise.
- II. Scope: IRS and federal election law rules governing (c)(3)s and (c)(4)s, and if time permits, a few words about political action committees (“PACs”) and 527 organizations at the end.
 - A. Focus on federal, not state law
 - B. Political activity--IRS and federal election rules--Federal Election Campaign Act (“FECA”)
- III. Assumptions & Caveats:
 - A. Assumption—Presentation directed toward counsel for organizations who aren’t 527s or otherwise in existence for partisan political purposes, but rather geared toward people whose primary purpose is not political, but who have active, civically engaged individuals in their leadership who are naturally politically active and whose organizations have strong views on particular issues or sets of issues
 - B. Caveats: I have a bias towards 501(c)(3) p.o.v., the presentation is necessarily superficial because of the time available
- IV. IRS Rules for Political Activity
 - A. A 501(c)(3) may not participate in or intervene in any political campaign on behalf of, or in opposition to any candidate for public office (26 USC 501(c)(3); 26 CFR 1.501(c)(3)-1)
 - 1. Definition of candidate (26 CFR 53-4945-3)
 - 2. Definition of public office
 - 3. Practical considerations
 - a. Do you have a policy?
 - b. Do you enforce the policy?
 - B. 501(c)(4)s may engage in the same nonpartisan election-related activity that (c)(3)s engage in, in addition, they may engage in some partisan electoral work but it cannot be the (c)(4)s primary activity, it may have tax consequences and they have to file an IRS Form 1120-POL (26 CFR 1.501(c)(4)-1; Rev Rul 81-95; Rev Rul 2004-6)
 - 1. 501(c)(4)s may:
 - a. Endorse candidates
 - b. Make statements in support or opposition to candidates to the organization’s members
 - c. Create an affiliated 527 and/or separate segregated fund
- V. General rules for corporate engagement in politics—applicable to all corporations (for profit and non-profit)—derived primarily from the FECA
 - c. Activities (c)(3)s may engage in, *so long as they’re undertaken in a non-partisan way* (TAM 1999-07-021 (May 20, 1998¹)):
 - i. Issue advocacy
 - ii. Voter education
 - You don’t have to include minor parties in the primary stage of debates (See *Fulani v. League of Women Voters Educ. Fund*, 882 F. 2d 621 1989.)
 - iii. Candidate education
 - d. How is “non-partisan” determined (Revenue Ruling 2007-41)?
 - e. Activities (c)(3)s may not engage in:
 - i. Overt campaigning for candidates, allowing organizational resources to subsidize a campaign
 - ii. Endorsing a candidate
 - iii. Soliciting or directing contributions
 - iv. Rating candidates in way that suggests a preference

¹ While a TAM can’t be cited as precedent, this TAM includes short summaries of numerous sources that are precedent.

A. Key concepts

1. Express advocacy—clearly advocating the election or defeat of a candidate or party, may include “code words”
2. Independent expenditure—expenditure clearly advocating the election or defeat of a candidate but not a coordinated communication
3. Contribution—includes cash, in-kind and coordinated expenditures
4. Coordinated communication—a coordinated expenditure is an expenditure done with the cooperation, consent of, in coordination with, at the request of or suggestion of a candidate or the candidate’s agent

B. General Prohibitions

1. No contributions from general treasury funds (11 CFR 114.2(b))
 - a. Cash
 - b. In-kind
2. Express advocacy (11 CFR 100.22)
3. Electioneering communications (subject of *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (April 25, 2007))
4. Coordinated communications are considered contributions (11 CFR 109.21)
5. Independent Expenditures

C. Exceptions for Qualified nonprofit corporations—a.k.a. “QNCs” (11 CFR 114.10)

1. May independent expenditures and electioneering communications but may not coordinate them (independent expenditures only)
2. Qualifying factors
 - a. 501(c)(4)
 - b. Exists exclusively to promote political ideas

- c. No business activities
- d. No shareholders
- e. No funds from unions or business corporations

D. FEC enforcement mechanism is complaint driven

VI. 527s and PACs

A. 527s are a creation of the tax code (IRC Section 527), include broad array of entities such as political action committees, candidate committees, political parties, state PACs

1. A 527’s primary activity will be political and a sub-set of 527s may operate largely outside the parameters of FECA or state election law
2. 527s may not expressly advocate the election or defeat of a specific candidate or party or make contributions

B. PACs generally refer to status and duties vis-à-vis the FEC and they are organized as separate segregated funds²

1. Connected federal PACs are affiliated (i.e., “connected” to) a corporation or union—the corporation may be a 501(c)(4)
 - a. May solicit contributions only from certain eligible contributors (e.g., a corporation’s senior management or a (c)(4)s members)
 - b. Corporation or union may pay administrative and fundraising costs
 - c. May make direct contributions to candidates and unlimited independent expenditures, but detailed rules about reporting them to the FEC
2. Non-connected federal PACs are created by individuals and are not associated with a corporation or a union
 - a. May solicit contributions from the general public
 - b. Administrative and fundraising costs have to be paid by funds solicited

² A 527, which does not have obligations vis-a-vis the FEC or state electoral commissions may also be organized as a separate segregated fund. In such cases it must register with the IRS but not the FEC.

- c. May make direct contributions to candidates and unlimited independent expenditures, but detailed rules about reporting them to the FEC

VII. The creation of a PAC or the creation of an affiliate which, in turn creates a PAC or which has more latitude to participate in politics, is often one reason a nonprofit might decide to set up an affiliate. On that note, I'll turn it over to Jeff Glassie who will discuss nonprofits and affiliates.