

Maclellan

Carrying Out Your Charitable Purpose

Do you need to obtain 501(c)(3) public charity status?



Starting a 501(c)(3)

Becoming a 501(c)(3) is a major undertaking for any organization wishing to be recognized as a public charity by the IRS, and is not to be taken lightly. With public charity status, there come certain benefits as well as responsibilities. We cannot provide you with legal advice, and recommend that you consult with a lawyer if you are considering pursuing 501(c)(3) public charity status.

What is a 501(c)(3) public charity?¹

Generally, organizations that are classified as public charities are those that:

- are churches, hospitals, qualified medical research organizations affiliated with hospitals, schools, colleges and universities,
- have an active program of fundraising and receive contributions from many sources, including the general public, governmental agencies, corporations, private foundations or other public charities,
- receive income from the conduct of activities in furtherance of the organization's exempt purposes

Public charities must operate for exempt purposes:

The exempt purposes set forth in Internal Revenue Code section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.²

How can I apply for 501(c)(3) status with the IRS?

If you would like to learn how to apply, check out [this](#) publication from the IRS as a starting point. Check with your legal advisor to see what other requirements exist for registering a charity.

¹ IRS. (2018). *Public Charities*. Retrieved from <https://www.irs.gov/charities-non-profits/charitable-organizations/public-charities>

² IRS. (2018). *"Charitable" Purposes*. Retrieved from <https://www.irs.gov/charities-non-profits/charitable-purposes>



How can I prepare for the responsibilities?

You will want to be aware of best practices and legal requirements associated with creating and governing a 501(c)(3) public charity. There are many things to consider: board governance, policies and procedures, accounting practices, restrictions on prohibited or regulated activities, and fundraising needs for remaining publicly supported. We suggest that in addition to getting solid legal counsel, you educate yourself on your responsibilities and non-profit best practices.

As a starter you might want to visit “[Good Governance Policies for Nonprofits](#)” published by the National Council of Nonprofits.³

Are there other options?

Starting a 501(c)(3) public charity is not always the only way for you to carry out charitable activities, and you may want to explore other options before investing time and money in pursuing IRS determination.

Fiscal Sponsorship

Sometimes startup organizations may not have the time or infrastructure needed for complying with the administrative and legal requirements of being a 501(c)(3) public charity, and would benefit from the support of another organization. Fiscal Sponsorship may be a good option in these cases, as Fiscal Sponsors are able to provide oversight or administrative assistance for different projects or startup organizations. Additionally, certain international organizations may be interested in working with a Fiscal Sponsor in the US if they are interested in pursuing expanded funding in the US. If you are interested in pursuing Fiscal Sponsorship, reach out to an organization with a mission compatible with your project, and discuss with them your desire to seek Fiscal Sponsorship.

To learn more about Fiscal Sponsorship and its requirements, we recommend you read more to develop a basic understanding, and consult with your legal counsel.

- “[Fiscal Sponsorship- Six Ways To Do It Right](#)”⁴

³ National Council of Nonprofits. (n.d.) *Good governance policies for nonprofits*. Retrieved from <https://www.councilofnonprofits.org/tools-resources/good-governance-policies-nonprofits>

⁴ Colvin, G. R. (2005). *Fiscal sponsorship - six ways to do it right*. Retrieved from <https://www.adlercolvin.com/fiscal-sponsorship-six-ways-to-do-it-right-a-synopsis/>



- “Fiscal Sponsorship for Nonprofits”⁵

Parent/Subsidiary

A parent organization holds ownership over other subsidiary entities, or chapters, or a subsidiary organization is under the common control or ownership of a parent group. A parent may either list its subsidiaries as part of their group exemption on their IRS 501(c)(3) determination letter, or simply recognize the entity as a chapter under its main organization.

A subsidiary organization does not have an IRS determination letter in its own name but will either be named as part of a group exemption on another organization's IRS 501(c)(3) determination letter or will be recognized as a chapter of another organization who has its own IRS 501(c)(3) determination letter.

If you believe that you may qualify as a subsidiary of a parent organization, contact them to discuss the details of your relationship, and any benefits that may apply to your organization. If they agree to serve as your parent organization, discuss with them any restrictions they may place on pursuing grant funds, and who will be the payee of any grants.

Equivalency Determination

Some organizations outside of the US may qualify for equivalency determination:

Equivalency determination (ED) is a good faith determination that a foreign organization is the equivalent of a U.S. public charity, operating foundation or foreign government, such that it may receive a qualifying distribution or a grant for which expenditure responsibility (ER) is not required. To make this determination, a qualified reviewer collects and analyzes detailed information about a foreign organization's operations and finances (when required) and, based upon this information, may make a determination that the organization is equivalent to a U.S. public charity.⁶

This process is rigorous and designed to verify whether a foreign organization meets the same legal requirements that 501(c)(3) entities do in the United States. If you are a foreign organization interested in obtaining equivalency determination, you should contact an organization that offers these services for more information.

⁵ National Council of Nonprofits. (n.d). Fiscal sponsorship for nonprofits. Retrieved from <https://www.councilofnonprofits.org/tools-resources/fiscal-sponsorship-nonprofits>

⁶ NGOsource (n.d.) What is equivalency determination? Retrieved from <http://www.ngosource.org/what-is-equivalency-determination-o>



Expenditure Responsibility

Certain foundations may be willing to exercise expenditure responsibility in their grantmaking, allowing for organizations that are not classified as public charities to carry out charitable activities. This process requires extensive reporting to ensure that the funds are spent for charitable purposes. You may want to check with the donor you are soliciting funds from to see if they are willing to exercise expenditure responsibility. As always, consult with your legal counsel.

SUMMARY

Many different options exist for carrying out charitable activities, whether in the US or around the world. Investigating and weighing your options is an important part of the process, as is seeking legal counsel. Each option has distinct advantages and challenges. Before undertaking any major effort, it is always wise to consider if there are others already doing the work you are passionate about, and if there is a creative way that you can join forces with them!

Disclaimer: This information is provided only as general information and is not intended to constitute legal advice or to substitute for obtaining legal advice from competent, independent, legal counsel in your relevant jurisdiction. For all legal opinion please contact your legal counsel directly.