

# Advocacy Check-Up

## 501(C)(4) NONPROFIT SELF-ASSESSMENT



This self-assessment is designed to help your 501(c)(4) social welfare organization assess its overall compliance with federal and state laws when engaging in issue-based advocacy or political activity. It includes questions related to relevant tracking and reporting requirements, organizational policies and procedures, and more! The goal is to identify opportunities for you to maximize your organization's impact while remaining in compliance with the law.

Through this self-assessment, we hope to help you identify opportunities to enhance your organization's advocacy activities and raise potential issues about compliance with the tax, lobbying, campaign finance, and other laws that govern your work. This assessment is limited in scope. It is meant to provide guidance and suggestions to your organization on how to amplify its advocacy. It is not meant as a complete organization-wide evaluation, nor does it serve as legal advice or as a replacement for a formal financial or compliance systems audit.

Please be aware that the laws and regulations governing 501(c)(4) programs vary depending on whether you are engaged in federal, state, or local-level advocacy activities. This compliance self-assessment will cover:

- Issue Advocacy and Lobbying Activities
- Election-Related Activities
  - Nonpartisan Activities
  - Partisan Activities
- Funding Sources and Solicitations
- 501(c)(4) Primary/Secondary Activity Split
- Affiliated Organizations
- Governance and Administration

### GETTING STARTED

To facilitate the advocacy compliance self-assessment, the following documents may be helpful:

- Most recent Form 990 and relevant schedules
- Mission statement, policy agenda, and strategic plan
- IRS Form 1024/1024A (if filed with the IRS)
- 1120 POL returns (if any)
- Organization time sheet samples, staff instructions, or details regarding organizational time-tracking systems
- Contingency or crisis plans
- Organizational staffing chart or decision tree
- Employee handbook and union contract (if any)
- Internal policies, like document retention or gift acceptance policies
- Organizational budget for fiscal year
- Staff training materials related to social welfare programs and electoral activities
- Cost-sharing agreements with other organizations, including affiliated organizations (if any)
- Fiscal sponsorship agreements (if any)
- Recent federal or state lobbying disclosure filings (if any) and/or contracts with outside lobbyists

- Recent federal or state campaign finance reports (if any)
  - Current grant agreements (if any)
  - Copy of Articles of Incorporation
  - Copy of Bylaws
  - Copies of the organization's insurance policies (if any)
  - Board meeting minutes
  - State charitable organization registrations including contracts with fundraising consultants
- 

## ISSUE ADVOCACY AND LOBBYING

A 501(c)(4)'s primary purpose must be social welfare, which means it must operate primarily to further the common good. The bulk of its activities must remain nonpartisan, but they can include things like lobbying, issue advocacy, education campaigns, research, and nonpartisan voter outreach. 501(c)(4)s may also engage in some partisan political activity, but this type of activity must remain a secondary purpose of the organization. The ratio between primary purpose and secondary (partisan) purpose activities is often referred to as an organizational split. Each organization must determine, as part of its risk assessment, what its ideal ratio is and how it will adhere to this ratio.

Lobbying, as defined by the Internal Revenue Code (IRC), is a specific type of advocacy designed to influence legislation (including ballot measures, nominations that require legislative confirmation, advocacy around public budgets, and more). It is important to note that the IRC does not limit the amount of lobbying that a 501(c)(4) may undertake, but the organization will want to differentiate its general issue advocacy and other educational activities from lobbying to remain in compliance with all relevant laws.

The organization needs to track its lobbying activity for a variety of reasons. First, if a 501(c)(4) receives grants from 501(c)(3)s, it will need to determine the amount of those funds that are available for lobbying. A lobbying grant from a 501(c)(3) public charity will count against the grantor's lobbying limit, so many grants to 501(c)(4)s from public charities restrict or specifically address the amount of grant funds available for lobbying activities. Grants from private foundations to 501(c)(4)s require "expenditure responsibility," which means that grants from private foundations expressly prohibit lobbying (legislative activity) with grant funds.

Second, lobbying activity should be tracked since it may require disclosure under local, state, and/or federal law. If a 501(c)(4) engages in legislative or executive branch advocacy, it may be required to register the organization or its staff as lobbyists. The definitions of lobbying under these bodies of law often differ from the IRC's definitions and can include legislative, executive, and administrative advocacy. Lobbying disclosure laws may or may not regulate grassroots lobbying or volunteer activity. While lobbying disclosure laws typically do not limit how much lobbying a 501(c)(4) can do, they do require lobbyist registration and reporting if certain thresholds are met. To find information on the agencies charged with regulating lobbying at the state and federal levels, [click here](#).

**General Questions**

1. **Does your organization advocate for or against legislation at the following levels of government?**

- a. Federal  Yes  No  Don't Know
- b. State  Yes  No  Don't Know
- c. Local  Yes  No  Don't Know
- d. International  Yes  No  Don't Know

2. **Does your organization engage in executive branch advocacy at the following levels of government?** Executive branch advocacy could include advocacy to agencies and executive branch officials (including advocacy related to agency rulemaking, regulations, executive orders, or advocating for changing how existing laws are enforced)

- a. Federal  Yes  No  Don't Know
- b. State  Yes  No  Don't Know<sub>1</sub>
- c. Local  Yes  No  Don't Know
- d. International  Yes  No  Don't Know

3. **Does your organization have a policy agenda?**

- Yes  No  Don't Know

*If not, how does your organization make decisions about when to take positions?*

4. **Does your organization's board support the organization's lobbying activities?**

- Yes  No  Don't Know

5. **Does your organization contract with outside consultants for lobbying activities?**

- Yes  No  Don't Know

a. If so, do the lobbying contracts outline the compliance responsibilities regarding registration and reporting requirements?

- Yes  No  Don't Know

6. **Does your organization use time sheets for employees to keep track of lobbying and non-lobbying activity?**

- Yes  No  Don't Know

*If not, how does it keep track of lobbying expenditures?*

## General Questions *(continued)*

- a. Does your time-tracking system differentiate between different types of lobbying activities for reporting and disclosure purposes (e.g. direct vs. grassroots lobbying, which may be separately limited in grant agreements, or executive branch vs. legislative advocacy, which can both trigger lobbyist registration)?
- Yes     No
- b. Does your time-tracking system track the jurisdiction in which various lobbying (or advocacy) activities take place?
- Yes     No
7. **Does your organization track the use of its funds so that only funds that permit lobbying are used for lobbying purposes?** Many grants (including those from foundations and government sources) restrict how funds may be used.
- Yes     No     Don't Know
8. **Are members of your staff familiar with the definitions of lobbying under the Internal Revenue Code in addition to the definitions of lobbying under local, state, and federal lobbying disclosure laws (which often define lobbying more broadly than the IRC to include non-legislative advocacy)?**
- Yes     No     Don't Know
9. **Does your organization have a system in place to track lobbying direct costs (e.g. lobbying travel expenses, printing costs, etc.) including both direct and grassroots lobbying expenses?** This may be required in order to comply with grant reporting requirements.
- Yes     No     Don't Know
10. **Does your organization report any lobbying on your Form 990? Lobbying expenditures are reported on Schedule C of Form 990.** 501(c)(4)s use Schedule C to provide information about their political campaign and lobbying activities.
- Yes     No     Don't Know
11. **If your organization serves as a fiscal sponsor, do you capture the lobbying expenses (and expenditures) of all fiscally sponsored projects?**
- Yes     No     Don't Know
12. **If your organization operates under fiscal sponsorship (e.g. you are fiscally sponsored), do you capture and report any lobbying expenses to your sponsor, when required?**
- Yes     No     Don't Know
13. **Does your organization take any steps to inform its staff (and others associated with the organization, including consultants) of the requirements for tracking and reporting lobbying?**
- Yes     No     Don't Know
14. **Does your organization require its staff to track time spent both on actual lobbying communications as well as preparation for lobbying?** Preparation for lobbying often counts as lobbying under both IRC and lobbying disclosure definitions.
- Yes     No     Don't Know

## Lobbying Disclosure Compliance

15. **Is your organization aware that some states, municipalities, and the federal government require nonprofits (and/or their staff) that lobby to register as lobbyists or lobbying entities and report their lobbying activities when certain thresholds/triggers are met?**

- Yes     No     Don't Know

16. **Is your organization aware that lobbying disclosure laws often require tracking and reporting of both *legislative* and *executive branch advocacy* activities (including advocacy related to agency rulemaking, regulations, executive orders, etc.)?**

- Yes     No     Don't Know

17. **Have you ever investigated whether your organization or staff meet the thresholds triggering registration as a lobbyist in the following jurisdictions?**

- |   |                              |                             |                                     |
|---|------------------------------|-----------------------------|-------------------------------------|
| a. Federal  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |
| b. State  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |
| c. County   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |
| d. City   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |
| e. Special Districts (e.g., school districts or transportation authorities) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |

For information about state-level lobbying disclosure rules, check out Alliance for Justice's [Practical Guidance lobbying resource series](#) and AFJ Action's spreadsheet on [state lobbying and ethics agencies](#).

18. **If your organization or staff are required to register as lobbyists, what systems do you have in place to ensure the proper and timely filing of required lobbying disclosure reports?**

## Ballot Measures

Supporting or opposing ballot measures, local millages, constitutional amendments, and bond measures is considered lobbying activity under the Internal Revenue Code. While the Code does not limit how much of this type of activity a 501(c)(4) may conduct, this activity could trigger registration and disclosure requirements at the state or local level. In fact, ballot measure advocacy is often regulated by state campaign finance and election laws.

19. **Does your organization seek to influence the outcome of initiatives, referendums, or other ballot measures, either through direct advocacy or grants to other organizations that are undertaking that activity?**

- Yes     No     Don't Know

If yes,

a. Are you tracking your ballot measure advocacy activities and expenditures?

- Yes     No

**Ballot Measures** *(continued)*

b. Have you determined whether you are required to register and report at the state or local level?

Yes       No

*Please note that some jurisdictions may require political committee formation for organizations that join forces with others to influence measures or engage in substantial ballot measure activity.*

c. Do you maintain a disclosure calendar to ensure timely registration and reporting?

Yes       No

d. Are you aware that many jurisdictions require disclaimers on certain ballot measure communications and advertisements?

Yes       No

e. Are you aware that many jurisdictions require disclosure of ballot measure donors in addition to expenditures and activities?

Yes       No

f. Are you aware that several jurisdictions have recently enacted (or are in the process of enacting) legislation that would prohibit the use of foreign donor funds for ballot measure activities? Some may even prohibit any engagement in ballot measure advocacy if a single dollar has been accepted from foreign sources.

Yes       No

**OTHER ELECTION RELATED ACTIVITIES FOR 501(C)(4) ORGANIZATIONS**

501(c)(4) organizations may participate in elections in a variety of different ways. They may conduct nonpartisan voter engagement activities (those that do not support or oppose candidates for public office), or they may engage in some partisan political activity (secondary activity) to sway voters to vote for certain types of candidates or political parties. Organizations need to be aware of the **Facts & Circumstances** analysis that can be used to determine whether their communications and activities are nonpartisan or partisan.

**Nonpartisan Election Activities**

20. **Does your organization provide training or other guidance to staff about how to differentiate between nonpartisan and partisan political activity?**

Yes       No       Don't Know

21. **Does your organization provide training or other guidance to staff about how to differentiate between nonpartisan and partisan work, particularly as it pertains to the following activities:**

- a. Nonpartisan Candidate Forums/Townhalls       Yes       No
- b. Nonpartisan Candidate Debates       Yes       No
- c. Nonpartisan Candidate Appearances       Yes       No
- d. Nonpartisan Legislative Scorecards       Yes       No
- e. Nonpartisan Candidate Questionnaires       Yes       No

**Nonpartisan Election Activities** *(continued)*

- 21. f. Nonpartisan Voter Registration  Yes  No
- g. Nonpartisan Get out the Vote (GOTV)  Yes  No
- h. Nonpartisan Issue Advocacy  Yes  No
- i. Nonpartisan Polling  Yes  No
- j. Nonpartisan Praise/Criticism of Incumbents  Yes  No

22. **Does the organization have any safeguards in place to ensure that primary purpose activities of these types are vetted to ensure that they are truly nonpartisan?**

- Yes  No

23. **Given the prohibition on 501(c)(4)s from directly supporting, or coordinating with federal candidates, does your organization have a policy surrounding staff, board members, volunteers, and other representatives and the use of organizational resources, including its name, for personal partisan political activities?**

- Yes  No  Don't Know

*If not, consider adopting an election season policy so that organizational resources are not utilized to further the personal, partisan political interests of staff, volunteers, etc.*

**Partisan Activities**

Federal election law prohibits 501(c)(4) organizations from directly supporting or contributing to candidates for federal office, including making monetary or in-kind contributions. It also prohibits many communications that are coordinated with candidates or campaigns. However, 501(c)(4) organizations may participate in some electoral activities that do support or oppose candidates for office in a variety of ways, including by making independent expenditures or establishing political action committees.

Whether or how much a 501(c)(4) can contribute to candidates and political campaigns at the non-federal level is determined by each state and/or local municipality. The following section's questions can be applied to activity at either the federal or state level.

24. **Does your organization engage in, support, sponsor, or otherwise participate in the following activities, either on its own or in conjunction with other entities?**

- a. Candidate Scorecards  Yes  No
- b. Partisan Get Out the Vote (GOTV)  Yes  No
- c. Independent Expenditures  Yes  No
- d. Candidate Endorsements  Yes  No
- e. Partisan Polling  Yes  No
- f. Candidate Appearances  Yes  No
- g. Use Candidates in Fundraising  Yes  No
- h. Partisan Criticism/Praise of Incumbents  Yes  No

**Partisan Activities** *(continued)*

i. **Door-to-Door** canvassing as:

- i. Coordinated with Federal Candidates  Yes  No
- ii. Independent Expenditures  Yes  No

25. **Is your organization aware that registration and reporting may be required at the federal, state or local level for certain partisan political activities (e.g. candidate endorsements, contributions to candidates (when allowed), other independent expenditures, etc.)?**

Yes  No

26. **What systems does your organization have in place to ensure the proper tracking, potential registration, and reporting of partisan activities to relevant agencies?**

27. **Is your organization aware that some jurisdictions impose contribution limits?**

Yes  No

28. **Is your organization aware that some jurisdictions may also require reporting if organizations engage in advocacy that is the “functional equivalent” of express advocacy?**

Yes  No

29. **Does your organization maintain a disclosure/reporting calendar for each jurisdiction where it engages in partisan advocacy or makes partisan expenditures?**

Yes  No

30. **Is your organization aware that many jurisdictions require donor disclosure when partisan expenditures are made?**

Yes  No

31. **Is your organization aware of prohibitions against the use of donations from foreign contributors for federal and state electoral activity?**

Yes  No

a. Does your organization have a process for handling questionable contributions? For example, those that appear to be from a foreign national.

Yes  No

32. **Is your organization aware of relevant required communication disclaimers (e.g. “Paid for by” disclaimers or disclaimers required for different mediums such as broadcast, radio, internet, mail, or texting)?**

Yes  No

How does it ensure that it abides by disclaimer requirements?

**Partisan Activities** *(continued)*

33. **Does your organization have a firewall (policy) in place to prevent the flow of coordinated information (when optional) into independent expenditure (non-coordinated) activities?**
- Yes     No
34. **Does your organization train staff on what constitutes a coordinated activity vs. an independent one and how to ensure organizational firewalls are preserved?**
- Yes     No

**Primary/Secondary Split**

A 501(c)(4) may engage in some partisan political work so long as that work remains a secondary purpose of the organization. While the Internal Revenue Code does not clearly define how much activity qualifies as a secondary activity, it must certainly be less than half (50%) of the organization's overall activities and expenditures. The ratio between the primary purpose and partisan purpose is often referred to as an organizational split. Each organization must determine, as part of its risk assessment, what its ideal split is and how it will adhere to the legal requirement to primarily engage in nonpartisan activities.<sup>1</sup>

501(c)(4) social welfare organizations can engage in a number of activities to influence public policy that do not qualify as partisan, secondary purpose activities. Nonpartisan activities could include legislative advocacy, litigation, educational campaigns, research, executive branch advocacy, and more.

35. **Does your organization track all of its nonpartisan, primary purpose activities and expenditures so that it can demonstrate that any partisan activities are indeed a secondary purpose of the organization?**
- Yes     No
36. **If your 501(c)(4) engages in partisan political activity (support or opposition of candidates for public office), does it have a system to check in on secondary purpose time and spending throughout the year to ensure that it remains a secondary activity of the organization?**
- Yes     No
37. **What is your organization's fiscal year? Does your organization have an offset fiscal year versus a calendar year in order to mitigate election-year advocacy? For example, a July to June fiscal year.**
- Yes     No
38. **Does your organization make grants to other groups?**
- Yes     No

*If so, please be aware that in some instances, you may be required to count all or part of the grant award against your own organization's secondary purpose split.*

1. In recent months, multiple cases have begun working their way through the courts that could signal a future change to the law related to how much partisan activity a 501(c)(4) may engage in. Please consult Counsel to determine the appropriate split for your organization.

## FUNDING SOURCES AND SOLICITATIONS

39. Does your organization receive funding from any of the following sources?

- |  |   |
|--|---|
| <input type="checkbox"/> Private Foundations           | <input type="checkbox"/> Individuals              |
| <input type="checkbox"/> Public Charities              | <input type="checkbox"/> 527 Political Committees |
| <input type="checkbox"/> Other 501(c)(4) Organizations | <input type="checkbox"/> Other                    |
| <input type="checkbox"/> 501(c)(5) labor unions        |   |

40. Is your organization aware of any restrictions on any funds that it receives from any source that limit your ability to use these funds on lobbying or partisan election-related activities?

- Yes     No

*Keep in mind that private foundation grants to 501(c)(4)s must utilize expenditure responsibility and prohibit the use of funds for lobbying and partisan electoral activity. Public foundation grants must also prohibit the use of funds for partisan political activity, but they may permit lobbying activities.*

41. Does your organization have a system to track grant funds and relevant program expenditures so it can comply with grant reporting requirements and ensure that funds received from (c)(3)s are not being used for non-(c)(3) purposes?

- Yes     No     Don't Know

42. Does your organization have a gift acceptance policy?

- Yes     No     Don't Know

43. Does your organization notify its donors of the non-tax deductibility of contributions to 501(c)(4)s?

- |                             |                              |                             |                                     |
|-----------------------------|------------------------------|-----------------------------|-------------------------------------|
| a. On its website?          | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |
| b. On donor communications? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |
| c. Elsewhere?               | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't Know |

44. Is your organization aware of when or if donor information is required to be disclosed at either the federal, state, or local level, when engaging in certain activities, such as ballot initiatives or partisan political activities?

- Yes     No

45. Has your organization determined whether it is required to register with a charitable solicitation office in the state(s) where the organization is located or operates?

- Yes     No

46. Has your organization determined whether it is required to register with a charitable solicitation office in each state where the organization solicits funds?

- Yes     No

47. Does your organization solicit contributions through its website?

- Yes     No

**FUNDING SOURCES & SOLICITATIONS** (continued)

48. Does your organization file annual reporting forms with each charitable solicitation office in which such reports are required?

Yes  No

49. If your organization conducts partisan (secondary purpose) activity, advocating for the election or defeat of candidates or political parties, do you require donors to affirm that they are a U.S. citizen or lawfully admitted permanent resident (i.e. green card holder) and that they are not a federal contractor?

Yes  No

50. Do you also require that donors affirm that their contributions are their own and not provided by or reimbursed by another person or entity?

Yes  No

51. Does your organization have a systematic approach to receiving and acknowledging donations from donors?

Yes  No

52. Does your donation acknowledgment clearly state that the donation is not tax-deductible?

Yes  No

**AFFILIATED ORGANIZATIONS**

53. If your organization has an affiliated 501(c)(3) or political committee / 527, do you have a cost-sharing agreement in place to ensure that each organization pays its fair share of costs?

Yes  No

If so, what procedures do you have in place to ensure compliance with your cost-sharing agreement?

If not, consider adopting a cost-sharing agreement. A sample agreement can be found in *The Connection*, AFJ's [guide](#) to creating and operating 501(c)(3)s, 501(c)(4)s, and political organizations.

54. Do your 501(c)(4) and affiliated organization(s) share staff?

Yes  No

If yes, do you have a time-tracking system in place to ensure that staff track their 501(c)(3), 501(c)(4), and 527 work separately?

Yes  No

55. Are your 501(c)(4) staff members aware that, unlike 501(c)(3)s, which are prohibited from engaging in partisan political activities, 501(c)(4) organizations may engage in partisan political activity as a secondary activity of the organization, but not the primary?

Yes  No

**AFFILIATED ORGANIZATIONS** (continued)

56. Does your staff receive training on what types of activities qualify as nonpartisan and partisan on a regular basis?

Yes  No

**GOVERNANCE/ADMINISTRATION**

57. Has your organization filed IRS form 8976, Notice of Intent to Operate Under Section 501(c)(4)? All newly formed 501(c)(4) organizations must provide notice of their existence to the IRS using this form within 60 days of incorporating or organizing.

Yes  No

58. Has your organization applied for recognition via IRS 1024-A? While not legally required, some organizations find it helpful to obtain recognition of their 501(c)(4) tax-exempt status.

Yes  No

59. Does your organization have an attorney (preferably with expertise in the nonprofit space), either in-house or with whom it regularly consults?

Yes  No

60. Does your organization have compliance or accounting staff to track the organizational primary/secondary split and to assist with required lobbying and campaign finance reporting at the local, state, and federal levels?

Yes  No

61. Does your organization have an agent for service of process?

Yes  No

62. Does your organization have appropriate financial oversight?

Yes  No

63. Does your organization have an accountant (preferably with expertise in the nonprofit space), either in-house or with whom it regularly consults?

Yes  No

64. Does your organization regularly file some version of Form 990 with the IRS?

Yes  No

65. Does your organization file Form 990-T (reporting taxable unrelated business income) with the IRS, when required?

Yes  No

66. Does your organization file the 1120 POL Return, when required?

Yes  No

67. Has your organization been audited or investigated by the IRS for any reason within the past 5 years?

Yes  No

**GOVERNANCE/ADMINISTRATION** (continued)

68. **Are you aware of the section on Form 990 that requires you to describe whether you have certain policies, including:**

- a. Document retention and destruction policy?  Yes  No  Don't Know
- b. Whistleblower policy?  Yes  No  Don't Know
- c. Written conflict of interest policy?  Yes  No  Don't Know
- d. Joint venture policy?  Yes  No  Don't Know

69. **Does your organization have liability insurance?**

- Yes  No

70. **Does your organization provide Directors & Officers insurance?**

- Yes  No

71. **Does your organization engage in legal or other professional work?**

- a. If yes, does it have malpractice insurance?  Yes  No  Not applicable

72. **Does your organization have cyber insurance?**

- Yes  No

73. **Is your organization licensed to do business in any state other than the state of its incorporation (or is it registered as a foreign corporation)?**

- Yes  No

74. **Does your organization have offices, employees, or programs in any state other than the state of incorporation that might require corporate/business registration in that jurisdiction?**

- Yes  No

If yes, list the states.

75. **Does your organization serve as a fiscal sponsor for any projects or organizations?**

- Yes  No

If yes,

a. Do you have a fiscal sponsorship agreement in place with the projects?

- Yes  No

b. Do you have a mechanism for projects to report back to you regarding their activities, including partisan political activity?

- Yes  No

