

Terms and Definitions Related to Nonprofits in the United States

developed by SCORE, Maine Association of Nonprofits and City of Portland Office of Economic Opportunity

501(C)3

Also written as 501c3 or 501(c)(3)

Section of the Internal Revenue Code that designates an organization as charitable and tax-exempt. Organizations qualifying under this section include religious, educational, charitable, amateur athletic, scientific or literary groups, organizations testing for public safety, or organizations involved in the prevention of cruelty to children or animals. Most organizations seeking foundation or corporate contributions secure a Section 501(c)(3) classification from the Internal Revenue Service (IRS). Note: The tax code sets forth a list of sections-501(c)(4-26)-to identify other nonprofit organizations whose function is not solely charitable (e.g., professional or veterans organizations, chambers of commerce, fraternal societies, etc.).

More information: www.irs.gov/charities-non-profits/charitable-organizations

501(C)4

Also written as 501c4 or 501(c)(4)

Corporations that have been granted 501(c)(4) status by the Internal Revenue Service as social welfare organizations that operate primarily to bring about "civic betterments and social improvements." Unlike 501(c)(3) tax-exempt nonprofits, donations to 501(c)(4) entities are not tax-deductible for the individual or corporation making the donation. 501(c)(4) organizations may engage in political lobbying and political campaign activities. This includes donations to political committees that support or oppose ballot measures, bond issues, recalls or referenda.

More information: www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations

ADVOCACY

Advocacy can take many forms. For nonprofits, advocacy usually means trying to create or change public policy to help your cause. Advocacy can include educating the public or elected officials about an issue in general as well as lobbying elected officials to take a certain position on a proposed law (writing letters, testifying at the state house, etc.). 501(c)(3) nonprofits must be very careful to understand and follow IRS rules when conducting any lobbying activities - doing too much lobbying can cause the organization to lose its charitable tax-exemption. 501(c)(3) nonprofits may not endorse specific candidates for office. 501(c)(4) nonprofits have more flexibility to lobby and may endorse candidates.

More information: www.bolderadvocacy.org

ANNUAL REPORT

There are two types of annual reports.

- One is an official document that Maine nonprofits must submit to the Maine Secretary of State's office by June 1st each year. www.maine.gov/sos/cec/corp/helpful.html
- The other is a voluntary report published by an organization to share with the people who use and donate to its programs and services. It may be a simple, typed document listing the year's activities and accomplishments or a detailed and professionally designed publication summarizing programmatic achievements. www.nonprofitmaine.org/answer/how-to-write-an-annual-report/

ARTICLES OF INCORPORATION

A document filed with the secretary of state or another appropriate state office by persons establishing a corporation. This is the first legal step in forming a nonprofit corporation.

ASSOCIATION

This is a term that can be used to describe a lot of different types of organizations and does not have a single legal definition. When seeing this term it is important not to make assumptions about the organization's structure or legal status.

AUDIT

Nonprofits generally carry out two kinds of "audits" of their financial records. One is a review (a general scan of the books to make sure everything is in order often conducted by an outsider). The second is a formal audit, usually conducted by an outside CPA firm during which the financial records are scrutinized closely. Some foundations require that nonprofits wishing to submit a grant application to have conducted a formal audit by a certified public account (CPA). Organizations that receive funding from the state or federal government may be required to have an audit.

More information: www.nonprofitmaine.org/answer/audit-guide/

B CORP

B Corporation is not an official type of corporation in Maine. When some people say B-Corp they are referencing being a "Benefit Corporation" which has to do with how state law defines certain kinds of organizations: www.maine.gov/sos/cec/corp/determining.html

Another way "B-Corp" is used is to refer to organizations that have been certified by an independent organization to have certain business practices that consider the impact of decisions on workers, customers, suppliers, community, and the environment.

BOARD COMMITTEES

Boards may create smaller groups that focus on particular aspects of the work and then report back to the larger board with recommendations or decisions. For example, a Finance Committee may meet more often about whether the organizations income and expenses are going as planned. Each board can decide what committees it needs to do its work, but typical committees including a Governance Committee (focused on board recruitment and orientation), a Marketing committee and Fundraising committee. Committees can include members of the staff or other volunteers in addition to board members.

More information: www.nonprofitmaine.org/answer/typical-board-committees/

BOARD INSURANCE

Board insurance, which is called Directors and Officers Insurance (D&O Insurance) offers protection against a breach of "duty" by the directors and officers. While state and federal law generally protect board members from being personally liable as long as *they are fulfilling their duties*, there are cases where the organization can be sued and board insurance can protect individual board members from these costs. Organizations are not required to have D&O insurance and whether or not to carry this kind of coverage is a good question to discuss with an insurance agent. Nonprofits may also want to consider other types of insurance, such as liability insurance, especially if they are working with children or conducting activities that have a high level of risk.

More information:

www.nonprofitmaine.org/answer/nonprofit-directors-and-officers-insurance/
www.nonprofitmaine.org/answer/liability-insurance/

BOARD OF DIRECTORS and

The **Board of Directors** is the group of people responsible for overseeing the organization's activities and making sure it is faithfully fulfilling its charitable purpose. Board members meet periodically--sometimes

ADVISORY BOARD

monthly, sometimes less often--to discuss and vote on the affairs of the organization. Boards must meet at least annually.

The law requires two primary duties of board members: the "duty of care" and the "duty of loyalty." The duty of care means actively participating in meetings, carefully reading all materials, asking questions to make sure you understand, and using your best judgement when voting for decisions. The duty of loyalty means that you must act in the best interests of the organization, putting what's best for the organization ahead of any personal interests. It also means respecting decisions made by the board. While state and federal law generally protect individual board members as long as they are fulfilling their duties, there are cases where an individual board member could have liability. See Board Insurance above.

Maine nonprofit boards must have at least 3 board members, but can have many more. How long board members serve on the board is determined by the bylaws. Usually board members do not remain the same over time - new board members are voted onto the board and others retire off the board.

An **Advisory Board** does not have a formal, legal role, but provides advice and feedback to the board and staff of an organization.

More information:

www.boardsource.org

www.nonprofitmaine.org

www.maine.gov/ag/consumer/charities/guide_charities.shtml

BOARD OFFICERS

Maine nonprofits are required to have a president, secretary and treasurer. Most nonprofits also have a vice president. These officers are often called the Executive Committee.

BYLAWS

Rules governing the operation of a nonprofit corporation. Bylaws often provide the methods for the selection of directors, the creation of committees and the conduct of meetings. It can be considered as the nonprofit's "constitution".

More information: www.nonprofitmaine.org/answer/sample-bylaws/

CAPITAL CAMPAIGN

Also referred to as a Capital Development Campaign, a capital campaign is an effort to raise substantial funds (usually hundreds of thousands of dollars) to pay for major needs of an organization such as buying a building or a major repair project.

More information: www.nonprofitmaine.org/answer/capital-campaigns/

CHARITABLE SOLICITATIONS

Charitable solicitation is the term the state uses to describe when you ask for donations of money, services or goods on behalf of a nonprofit organization.

CHARITABLE SOLICITATIONS

If you ask for donations of money, services or goods on behalf of a charitable organization, you may need to apply for a license from the state, unless you meet the criteria to be exempt from the license. This is true even if you already applied for tax-exempt status with the IRS,

REGISTRATION (or LICENSE)

In Maine, usually as long as you are not raising more than \$35,000 and you are not hiring someone to do your fundraising for you then you will be exempt.

Each state has their own rules about who needs a license, so if you are asking a lot of people in other states for money you should look up that state's rules.

More information: www.nonprofitmaine.org/answer/fundraising-and-charitable-solicitations-guidelines/

CHARITY or PUBLIC CHARITY

In its traditional legal meaning, the word "charity" encompasses religion, education, assistance to the government, promotion of health, relief of poverty or distress and other purposes that benefit the community. Nonprofit organizations that are organized and operated to further one of these purposes generally will be recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (see 501(c)(3)) and will be eligible to receive tax-deductible charitable gifts.

CHIEF EXECUTIVE OFFICER (CEO)

This is a term that is not very common in nonprofit organizations, but is used by some organizations, usually very large organizations, instead of Executive Director and usually means the top leader at an organization.

COMMUNITY NEEDS ASSESSMENT

A community needs assessment refers to a process to collect stories and data that prove that there is a problem that needs to be solved and help you understand and describe what may be causing the problem so you can work on solutions. Most funding sources will ask for a statement of need (or "what is the problem you are trying to solve") in their application process.

CONFLICT OF INTEREST

Maine's Nonprofit Corporate Act defines conflict of interest transactions as when a director or officer of a corporation has a direct or indirect financial interest (for example, if the organization wants to hire a company the board member works at). It is very helpful to have a written conflict of interest policy that board members review and sign each year and on which they share any potential conflicts of interest. The policy should describe how the board will avoid conflict of interest transactions, such as by having that board member not participate in any discussions or voting when they have a financial interest. The IRS asks on the annual return if the organization has a written conflict of interest policy and answering "no" may cause additional investigation.

More information: www.nonprofitmaine.org/answer/conflict-of-interest-policy/

DOCUMENT RETENTION POLICY

This kind of policy lists what types of documents and records need to be kept, for how long, and where. A document retention policy helps ensure the nonprofit has records that are required by law as well as keeping track of the history of the organization for future board members and staff. The IRS asks on the annual return if the organization has this policy and answering "no" may cause additional investigation.

More information: www.nonprofitmaine.org/answer/document-retention-policy/

EXECUTIVE DIRECTOR

An executive director is the most common title for the person who leads a nonprofit's day-to-day operations. Not all organizations have an executive director--many new and small organizations are run entirely by volunteers, including board members. The board is responsible for deciding when to hire an executive director and for selecting, supervising and evaluating the executive director (often referred to as the "ED"). The executive director is then responsible for hiring and managing other staff. The executive director is usually an

employee of the organization, but can also be an independent contractor. The board should have a written agreement/contract with the executive director. Executive directors usually attend and contribute at board meetings, but it is uncommon for them to be a voting member of the board due to the potential for conflicts of interest.

**FISCAL SPONSOR
and FISCAL AGENT**

The term "Fiscal Sponsorship" describes an arrangement between a nonprofit organization with 501(c)(3) tax-exempt status and a project conducted by an organization, group, or an individual that does not have 501(c)(3) status. Fiscal sponsorship permits the exempt sponsor to accept funds restricted for the sponsored project on the project's behalf. The sponsor, in turn, accepts the responsibility to ensure the funds are properly spent to achieve the project's goals. This arrangement is useful for new charitable projects that want to "test the waters" before deciding whether to form an independent entity as well as temporary projects or coalitions that are looking for a neutral party to administer their funds.

The term "Fiscal Agency" is another type of an arrangement where an established charity acts as the legal agent for a project, but doesn't have the same level of responsibility or control. This arrangement makes sense when a small nonprofit that has its own tax-exempt status wishes to contract with another organization to provide back office or administrative support. The important distinction between a fiscal sponsorship and a fiscal agency arrangement is that donations to a non-exempt project that has a fiscal sponsor are tax-deductible to the donor and those that are contributed to a non-exempt project with a fiscal agent are not.

More information: www.nonprofitmaine.org/answer/fiscal-sponsors/

**FORM 1023 and
FORM 1023 EZ**

Form 1023 is the form an organization submits to the IRS to apply for tax-exempt status under section 501(c)(3). There is also a simpler version of the form called the 1023-EZ which is for organizations that anticipate they will stay small (budgets under \$50,000). We generally recommend doing the longer form up front in case the organization grows. As of 2020, these forms have to be filed electronically.

**FORM 990 (Also
FORM 990-EZ, FORM
990-N, FORM 990-
PF)**

501c(3) tax exempt nonprofits must file a return each year to the IRS and these forms are called "the 990" but there are different versions of the form for different types and sizes of organizations.

More information: www.nonprofitmaine.org/blog/411-on-form-990/

FOUNDATION

There are private and public foundations, both of which are types of 501c3 tax-exempt nonprofits, but they are different in terms of where their money comes from. A private foundation is set up with an individual's money and makes charitable donations, usually to 501c3 nonprofits. A public foundation also makes contributions to 501c3 nonprofits but is able to solicit money from the public.

Sometimes organizations use the word "Foundation" in the name of their organization, but they are not technically a foundation in terms of how the IRS sees the organization.

**FUNDRAISING (and
DEVELOPMENT)**

All nonprofits need to raise money. Development implies a long term strategically designed plan to carry out a series of fundraising activities and reflects the importance of developing relationships with donors over time.

More information: www.nonprofitmaine.org/answercenter

GOVERNANCE

This term refers to the oversight of the organization by the board of directors and includes the board's work to develop the organization's vision and strategies and well as its work to monitor the organization's activities and comply with state and federal laws and reporting requirements.

More information: www.nonprofitmaine.org/answercenter

GRANTS

An award of funds to an organization or individual to undertake charitable activities. There are two major categories of grants: restricted and unrestricted. Restricted grants are for a specific purpose put forth by the foundation/grantor and the grant is to be used only for that purpose. An unrestricted grant can be used by the nonprofit as it wishes. Most foundations granting money require some form of reporting on how the money is spent.

INCORPORATED

Incorporating is the process of creating a legal entity that is separate from the individuals involved. A nonprofit becomes incorporated when the founders file incorporation paperwork with the state. You are not required to incorporate, but there are some advantages. If your group is the target of a lawsuit, incorporation can protect you from personal liability and qualifying for tax-exempt status from the IRS as a nonprofit corporation is an easier process. Form 1023 (the form used to apply for tax-exempt status from the IRS) asks what state the organization is incorporated in.

INDEMNIFICATION

Indemnification is a legal term which means that you will be protected from the financial costs if the organization is sued or has other financial trouble. Some boards have indemnification clauses in their bylaws that describe protections for board members, or have board insurance that covers indemnification.

INTERNAL REVENUE SERVICE (IRS)

The Internal Revenue Service (IRS) is a federal government agency that is part of the U.S. Department of Treasury. The IRS enforces tax law, including overseeing tax-exempt organizations such as 501(c)(3) public charities and private foundations. www.irs.gov/charities-and-nonprofits

L(3)C

L(3)C stands for "low-profit limited liability company" and is a type of business that is a hybrid between a nonprofit and for-profit and can receive programmatic "investments" from foundations. Maine allows this designation, but it is not commonly used and success depends on finding foundations willing to make "program related investments" to L(3)Cs, which may not be common. See Title 31 subsection 1611 of Maine Law.

MAINE NONPROFIT CORPORATION ACT

This is the Maine law that outlines rules for how Maine nonprofits must operate, including minimum numbers of board members, rules for board meetings and voting, protections for board members, and the processes for adapting or merging the organization, among other things. <https://legislature.maine.gov/statutes/13-B/title13-Bch0sec0.html>

MEMBERS

The term "member" has a specific definition under the Maine Nonprofit Corporation Act - a member is a person (either an individual or an entity) "having membership rights... in accordance with the provisions of its articles of incorporation or bylaws." Legal members may be granted the right to elect board members, for example.

But, the term "member" can also be used by some organizations to refer to their supporters or donors. This is perfectly fine and can be a useful fundraising strategy, but should not be confused with having "legal members."

The term "member" is also used to refer to someone on the board of directors (a board member) but this is not the same as legally defined members.

For more information: www.nonprofitmaine.org/answer/a-primer-on-membership-in-nonprofit-organizations/

MINUTES

Minutes is the term used to mean notes from a meeting that record what topics were discussed and what decisions were made. The Maine Nonprofit Corporations Act requires that boards record minutes for every meeting of the Board, and any committee that has the same authority of the Board, such as the Executive Committee. The secretary of the board is responsible for taking notes during the meeting. A board's minutes do not usually need to be made available to the public, but can be provided upon request.

For more information: www.nonprofitmaine.org/answer/board-meetings-retreats-minutes/

MISSION STATEMENT

The mission statement describes the overall purpose of the organization. Consider the organization's products, services, markets, values, and concern for public image.

"**Mission creep**" is when a nonprofit begins to offer programs or chase grants or other sources of money which don't totally align with its mission.

NONPROFIT, NON-PROFIT or NOT-FOR-PROFIT

A nonprofit is a type of organization that is neither a for-profit business nor a government agency and that does not pay out profits to any private individual or shareholder. The term "nonprofit" means that individuals don't profit, not that the organization cannot have savings. Any "profit" (savings) is reinvested in the mission of the organization.

It's important to know that the term "nonprofit" is a commonly used word but isn't always used to refer to the same thing. People often use the words "nonprofit" and "tax exempt" to mean the same thing, but an entity can be a nonprofit corporation registered with the state without having applied to the IRS for tax-exemption. And, there are many types of tax-exemption, so an organization could be a tax-exempt nonprofit without being "charitable."

For more information: www.nonprofitmaine.org/about-nonprofits/

REMUNERATION

Money paid to individuals. This term is often used in the context of whether board members can be paid. Although it is not illegal to pay board members, most recommend not paying board members who are supposed to be volunteers. If board members are paid for their service, it can have an impact on a foundation's willingness to grant money to the nonprofit if part of that money is benefiting individuals rather than the organization's mission. Nonprofits may (and often should) reimburse board members for anything the individual board members buy for the organization or pay in order to participate in the organization's work, such as travel costs. Some nonprofits also provide appreciation gifts to board members and other volunteers.

STAKEHOLDERS

Anyone who has an interest in the affairs of the nonprofit. This includes board members, staff and those in the community who benefit from the programs of the nonprofit.

STRATEGIC PLANNING /

Like other types of organizations, nonprofits create different kinds of plans to help guide the organization's work toward their goals. A nonprofit "Business Plan" usually has an overview of the organization's overall long-

BUSINESS PLANNING

term purpose (mission) and general programs/services as well as describing its "business model" - how it will get the money to make those programs/services possible and what percentage of revenue will come from different sources, such as donations, charging for services, grants from foundations, etc.).

"Strategic Planning" refers to a process that usually takes place every few years and through which the board, staff and other key partners work together to name more specific goals for the organization for the next several years and decide what strategies and programs will be used to reach those goals.

An "operational plan" or "workplan" is usually an annual process to describe the specific activities along the way. The annual budget should be developed to support the annual workplan and the larger strategic goals. (What staff, supplies, space, technology, etc. do we need to do these activities? How much will that cost? Where will we raise that money?) There are many different ways to go about business planning, strategic planning and workplanning.

For more information: www.nonprofitmaine.org/answercenter

TAX-EXEMPT

Tax-exempt means that an organization has applied for and received tax-exemption from the Internal Revenue Service (IRS), and is exempt from paying business income tax. The organization may still pay other types of taxes, such as payroll tax and sales tax. There are many different types of tax-exemption, but the most common type is 501(c)(3) which is public charities and private foundations.

UNRELATED BUSINESS INCOME

This refers to money that the nonprofit takes in that is not directly related to the achievement of its mission. An example might be rent that is paid to the nonprofit by a tenant in the nonprofit's building. Tax-exempt nonprofits do not need to pay business income tax, but nonprofits may need to pay taxes on unrelated business income.

VALUES

Deeply held beliefs that guide the work of the nonprofit.

VISION STATEMENT

A statement which puts forth an ideal picture of the future should the nonprofit totally achieve its mission. It is aspirational.

VOLUNTEERS

In addition to paid staff, a nonprofit also has volunteers. These are people who give freely of their time and resources to the nonprofit. It includes board members and those from the community who might serve on committees.

For more information: www.nonprofitmaine.org/answercenter

WHISTLEBLOWER PROTECTION POLICY

Federal law prohibits all corporations, including nonprofits, from retaliating against employees who report concerns to the authorities ("blow the whistle") about their employer's financial management and accounting practices. A whistleblower policy encourages staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization, specifies that the organization will protect the individual from retaliation, and explains how to make a report. The IRS asks on the annual return if the organization has a whistleblower policy and answering "no" may cause additional investigation.

For more information: www.nonprofitmaine.org/answer/whistleblower-policy/
