



# Exempt Organizations Technical Guide

## TG 3-31: Foundation Classification – Type I Supporting Organizations – IRC Section 509(a)(3)

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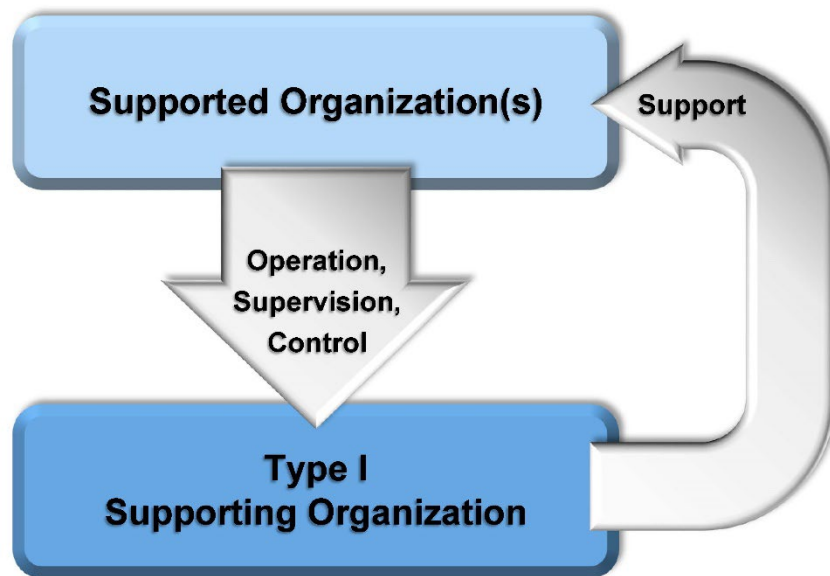
## I. Overview

- (1) Section 501(c)(3) of the Internal Revenue Code (IRC) describes organizations exempt from federal income tax:
  - a. Corporations and any community chest, fund or foundation that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.
  - b. No part of the net earnings inures to the benefit of any private shareholder or individual.
  - c. No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)) and which doesn't participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.
- (2) Organizations exempt under Section 501(c)(3) are classified as either a private foundation or public charity under Section 509. An organization is a private foundation within the meaning of Section 509 unless they are described under:
  - a. Section 509(a)(1) – Organizations described in Section 170(b)(1)(A) (except clauses (vii) and (viii)), which includes:
    - Section 170(b)(1)(a)(i) – Churches
    - Section 170(b)(1)(a)(ii) – Schools
    - Section 170(b)(1)(a)(iii) – Hospitals and Medical Research Organizations
    - Section 170(b)(1)(a)(iv) – Organizations that Benefit Colleges and Universities
    - Section 170(b)(1)(a)(v) – Governmental Entities
    - Section 170(b)(1)(a)(vi) – Substantial Public Support
  - b. Section 509(a)(2) – Broad Public Support
  - c. Section 509(a)(3) – Supporting Organizations
  - d. Section 509(a)(4) – Testing for Public Safety
- (3) This Technical Guide (TG) discusses the requirements for a Section 501(c)(3) organization described under Section 509(a)(3) as a supporting organization. Organizations that qualify as public charities under Section 509(a)(3) are organized and operated exclusively to support one or more Section 509(a)(1) or (2) organizations. 509(a)(3) supporting organizations are further subdivided into

Types I, II, and III, based on the type of relationship they have with their supported organization(s).

This Technical Guide describes Type I, while Types II and III are described in their own respective guides.

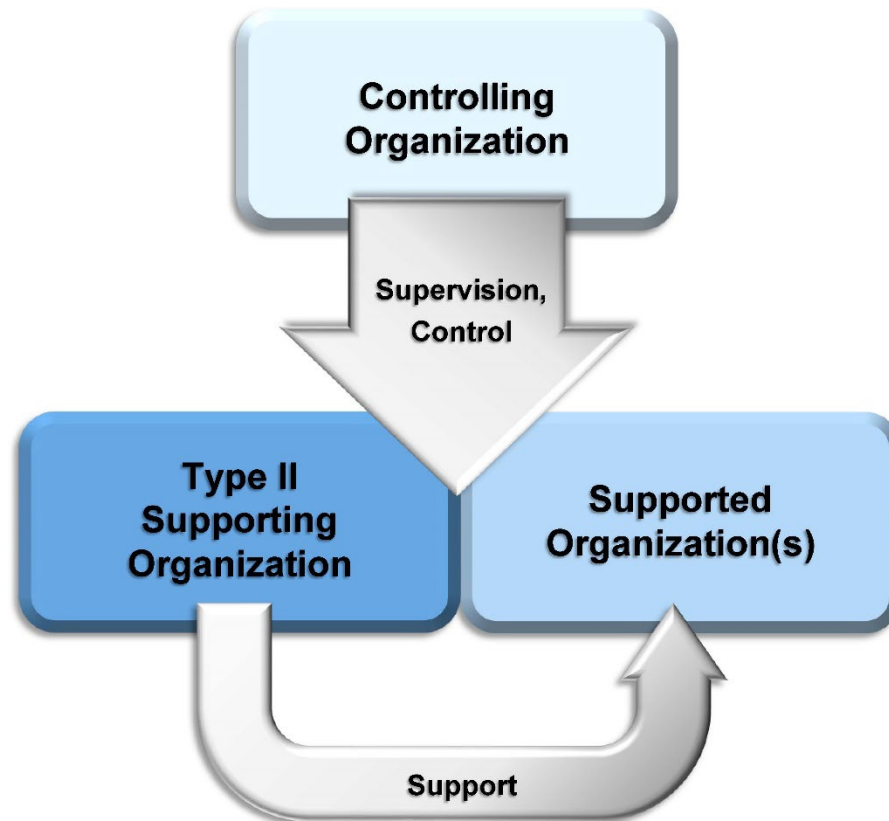
- a. **Type I.** A Type I supporting organization is operated, supervised, or controlled by its supported organization(s). The distinguishing feature of this relationship is the presence of a substantial degree of direction by the publicly supported organization(s) over the conduct of the supporting organization. The relationship between the supported organization(s) and the supporting organization is like a parent-subsidiary relationship. A Type I supporting organization must satisfy an organizational test, an operational test, a relationship requirement, and a control test.



Diagrammatic overview of a Type I supporting organization.

- b. **Type II.** A Type II supporting organization is supervised or controlled in connection with its supported organization(s). The distinguishing feature is the presence of common supervision or control among the governing bodies of all organizations involved, such as the presence of common directors. The relationship between the supported organization(s) and the supporting organization is like a brother-sister relationship. A Type II

supporting organization must satisfy an organizational test, an operational test, a relationship requirement, and a control test.



Diagrammatic overview of a Type II supporting organization.

- c. **Type III.** A Type III supporting organization is operated in connection with one or more publicly supported organizations. All supporting organizations must be responsive to the needs and demands of, and must constitute an integral part of or maintain significant involvement in, each of their supported organizations. While Type I and Type II supporting organizations are deemed to accomplish these responsiveness and integral part requirements by virtue of their governance relationships, the distinguishing feature in Type III is that the supporting organization is responsive to, and significantly involved in the operations of, the publicly supported organization. Because a Type III supporting organization is not subject to the same level of governance by its supported organization(s), a Type III supporting organization must pass separate responsiveness and integral part tests, in addition to the organizational test, operational test, relationship requirement, and control test applicable to all supporting organizations. A Type III supporting organization is either “functionally

integrated” or “non-functionally integrated,” depending on the manner in which it meets the integral part test.



Diagrammatic overview of a Type III supporting organization.

## A. Background / History

- (1) **Section 509(a)(3) enactment.** Section 509(a)(3) was enacted as a part of the Tax Reform Act of 1969, when the private foundation classification also made its statutory debut. The private foundation classification, with its related restrictions, arose from the congressional conclusion that organizations described in Section 501(c)(3) which neither depend on public support nor conduct an inherently public activity, might be more responsive to the private interests of their creators than the public interests they purport to serve.

As it still stands, Section 509(a) defined a private foundation as any domestic or foreign organization described in Section 501(c)(3), other than one able to qualify under one of the four exclusion categories listed in Section 509(a)(1), 509(a)(2), 509(a)(3), or 509(a)(4).

The 1982 IRS CPE, *Exclusion from Private Foundation Status Under IRC 509(a)(3)*, suggests that the reason Section 509(a)(3) supporting organizations are an exception to private foundation classification is because:

[T]he public charity’s control or involvement with the organization will render unlikely the potential for manipulation to private ends present in private foundations. The statute, therefore, requires that the organization meet [each of the four] tests.... Overall, these tests seek to define the extent of control or involvement by the IRC 509(a)(1) or (2) “supported” organization and the lack of control or involvement of others.

The 1997 IRS CPE, *Public Charity Status on the Razor’s Edge*, remarked, “It is this element of a supported organization’s oversight or accountability that legally allows the supporting organization (often sailing on the razor’s edge

between public charity and private foundation status) to navigate away from the shoals of Chapter 42 of the Code.”

- (2) **Pre-Pension Protection Act of 2006.** Although the categories now commonly referred to as Types I, II, and III have existed for decades, prior to 2005, determination letters did not distinguish among different Section 509(a)(3) organizations. In 2005, the IRS began to include information regarding supporting organization Types in determination letters. However, the law at that time did not distinguish between Type III functionally integrated supporting organizations and Type III non-functionally integrated supporting organizations.
- (3) **Pension Protection Act of 2006.** Sections 1241 through 1243 of the Pension Protection Act of 2006 revised the requirements for supporting organizations.
- (4) **Procedures for Determining Types.** Section 3.04 of Rev. Proc. 2011-10, 2011-2, I.R.B. 294 announced procedures for obtaining a determination of supporting organization type, either upon initial application or as a standalone determination. In 2012, the IRS introduced Form 8940, Request for Miscellaneous Determination, to facilitate applications for determination letters for, among other things, supporting organization type.
- (5) **2023 Final Regulations.** On October 16, 2023, the Treasury Department and the IRS published a Treasury Decision (T.D. 9981) in the Federal Register containing final regulations under Treasury Regulation (Treas. Reg.) 1.509(a)-4(i) regarding the prohibition on contributions from controlling donors of Type I and Type III supporting organizations and requirements for Type III functionally integrated and Type III non-functionally integrated supporting organizations. (See 88 FR 71287-01.) These amendments reflected the changes in law enacted by the Pension Protection Act of 2006 and were largely consistent with the 2016 proposed regulations. These final regulations substantially adopted the proposed regulations from February 19, 2016, that permitted reliance on such regulations beginning at that time.

## B. Relevant Terms

- (1) **Articles of Organization (Articles):** General term for an organization's organizing document. This exact type of document will vary based on whether the organization is formed as a corporation, unincorporated association, or trust.
- (2) **Control Test:** Disqualified persons may not control a supporting organization, whether directly or indirectly.
- (3) **Disqualified Persons:** For the purpose of Section 509(a)(3), disqualified persons are those stated in Section 4946, other than foundation managers or one or more organizations described in Section 509(a)(1) or (2).
- (4) **Operational Test:** A supporting organization must engage solely in activities that support or benefit its supported organization(s). These activities may include making payments to or for the use of, or providing services or facilities



for, individual members of the charitable class benefited by its supported organization(s).

- (5) **Organizational Test:** A supporting organization must be organized exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified Section 509(a)(1) or 509(a)(2) organizations. The organization's articles must also confirm this purpose with certain verbiage, depending on whether it is a Type I, II, or III supporting organization.
- (6) **Publicly Supported Organization:** An organization described in Section 509(a)(1) or 509(a)(2), and in some limited circumstances, Section 501(c)(4), (c)(5), or (c)(6). See Treas. Regs. 1.509(a)-4(a)(5) and 1.509(a)-4(k).
- (7) **Relationship Requirement:** A supporting organization is classified as a Type I, Type II, or Type III supporting organization based on the type of operation, supervision, and governance relationship it has with its supported organization(s).
- (8) **Specified Publicly Supported Organization:** An organization, generally described in Section 509(a)(1) or 509(a)(2), that is specified in the articles of the supporting organization. See Treas. Reg. 1.509(a)-4(d)(2)(iv) and (d)(4).
- (9) **Supported Organization:**
  - a. An organization described in Section 509(a)(1) or (a)(2) for whose benefit the organization described in Section 509(a)(3) is organized and operated, or with respect to which the organization performs the functions of, or carries out the purposes of. See Section 509(f)(3).
  - b. Alternatively, a Section 501(c)(4), (c)(5), or (c)(6) organization that would be described as publicly supported under Section 509(a)(2) (if it were a 501(c)(3) organization) may be a supported organization, subject to certain restrictions.
- (10) **Supporting Organization:**
  - a. Either an organization described in Section 509(a)(3) or an organization seeking Section 509(a)(3) status, depending upon its context. See Treas. Reg. 1.509(a)-4(a)(5).
  - b. A supporting organization is classified as a public charity, rather than as a private foundation. A supporting organization is further classified as Type I, Type II, or Type III, depending on the relationship it has with its supported organization(s).

## C. Law / Authority

- (1) Section 509(a)(3) of the Internal Revenue Code describes a supporting organization as an organization which —
  - (A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of

one or more specified organizations described in paragraph 509(a)(1) or (2),

(B) is —

(i) operated, supervised, or controlled by one or more organizations described in paragraph 509(a)(1) or (2),

(ii) supervised or controlled in connection with one or more such organizations, or

(iii) operated in connection with one or more such organizations, and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in Section 4946) other than foundation managers and other than one or more organizations described in paragraph 509(a)(1) or (2).

(2) Section 509(f), Requirements for supporting organizations

(3) Treas. Reg. 1.509(a)-4, Supporting Organizations

## II. Overview of Section 509(a)(3) Supporting Organizations

(1) Section 509(a)(3) excludes from the classification of private foundation organizations that:

a. Are organized, and at all times thereafter, operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in Section 509(a)(1) or (2),

b. Are in a relationship with a specified organization described in Section 509(a)(1) or (2) that qualifies as:

- **Type I:** Operated, supervised, or controlled by one or more organizations described in Section 509(a)(1) or (2),
- **Type II:** Supervised or controlled in connection with one or more such organizations, or
- **Type III:** Operated in connection with one or more such organizations, and

c. Are not controlled directly or indirectly by one or more disqualified persons (as defined in Section 4946) other than foundation managers and organizations described in Section 509(a)(1) or (2).

## A. Overview of the Four Tests



(1) To qualify for public charity status under Section 509(a)(3), a supporting organization must meet the following four tests:

- a. Organizational Test
- b. Operational Test
- c. Relationship Requirement
- d. Control Test

(2) **Organizational and Operational Tests, in general**

Treas. Reg. 1.509(a)-4(b)(1) provides that a supporting organization must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified supported organizations.

(3) **Organizational Test**

Treas. Reg. 1.509(a)-4(c)(1) provides that a supporting organization's organizing document must meet the following requirements:

- a. Limit the purposes of the organization to benefiting, performing the functions of, or carrying out the purposes of one or more specified organizations described in Sections 509(a)(1) or (2).
- b. Not expressly empower the organization to engage in activities that are not in furtherance of the authorized purposes.
- c. State the specified publicly supported organizations on whose behalf the organization is to be operated.
- d. Cannot expressly empower the organization to support or benefit any organization other than the specified publicly supported organizations.

See section "Organizational Test for Type I" below for additional information on the organizational test.

(4) **Operational Test**

Treas. Reg. 1.509(a)-4(e)(1) provides that a supporting organization will be regarded as operated exclusively to support one or more specified publicly

supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations, such as:

- a. Making payments to or for the use of, or
- b. Providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization.

Treas. Reg. 1.509(a)-4(e)(2) provides that a supporting organization may also satisfy the operational test by using its income to carry on an independent activity or program, which supports or benefits the specified publicly supported organization(s).

See section “Operational Test for Type I” below for additional information on the operational test.

#### (5) **Relationship Requirement**

Supporting organizations are commonly referred to by the type of relationship they have with their supported organization(s). These types are:

- a. **Type I:** Operated, supervised, or controlled by one or more supported organizations. See Treas. Reg. 1.509(a)-4(g).
- b. **Type II:** Supervised or controlled in connection with one or more supported organizations. See Treas. Reg. 1.509(a)-4(h).
- c. **Type III:** Operated in connection with one or more publicly supported organizations. See Treas. Reg. 1.509(a)-4(i).

Additionally, the following are two further subdivisions for Type III supporting organizations:

- Functionally integrated supporting organizations
- Non-functionally integrated supporting organizations

If an organization does not fall within the requirements of a Type I, II, or III relationship, it is not described in Section 509(a)(3). See Treas. Reg. 1.509(a)-4(f)(1).

Based on the specific requirements for each Type, the relationship is intended to show that the supporting organization is responsive to the needs or demands of its supported organization(s) and that it constitutes an integral part of, or maintains a significant involvement in, the operations of its supported organization(s). See Treas. Reg. 1.509(a)-4(f)(3).

A Type I supporting organization may not accept a gift or contribution from certain controlling donors. See Treas. Reg. 1.509(a)-4(f)(5).

See section “Relationship Requirement for Type I” below for additional information on the relationship requirements.

## **(6) Control Test**

To meet the control test, a supporting organization may not be directly or indirectly controlled by one or more disqualified persons. Here, a disqualified person means anyone who is a disqualified person under Section 4946, except Section 509(a)(1) or 509(a)(2) organizations or a foundation manager of the supporting organization who is not a disqualified person for another reason.

Treas. Reg. 1.509(a)-4(j)(1) provides that if a person is a disqualified person with respect to the supporting organization, he or she will continue to be a disqualified person even if the supported organization appoints or elects that person to be a director, trustee, or officer of the supporting organization.

See “Control Test” below for additional information on the control test.

## **(7) Failure to Meet Any of the Four Tests**

If an organization fails to meet any of these four tests — organizational, operational, relationship, or control — then, the organization does not qualify as a Section 509(a)(3) supporting organization. Further, according to Section 509(a), if the organization does not meet any of the other exceptions, it will be classified as a private foundation.

The regulations discuss the requirement to meet each of the four tests to qualify as a Section 501(c)(3) supporting organization.

## **III. Organizational Test for Type I**

- (1) A supporting organization must be organized exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations as described in Sections 509(a)(1) or 509(a)(2) (and in certain cases, organizations described in Section 501(c)(4), (5), or (6)). If an organization fails to meet the organizational test, it cannot qualify as a supporting organization. See Treas. Reg. 1.509(a)-4(b)(1).
- (2) According to Treas. Reg. 1.509(a)-4(c), a supporting organization’s articles of organization must:
  - a. Limit the purposes of the organization to operate exclusively for the benefit of specified publicly supported organization(s),
  - b. Not expressly empower the organization to engage in activities that aren’t in furtherance of benefit of specified publicly supported organization(s),
  - c. Specify the publicly supported organization(s) on whose behalf the organization is operated, and
  - d. Not expressly empower the organization to operate to support or benefit any organization(s) other than the ones specified.

- (3) It is not sufficient for the supporting organization to simply state such purposes in its organizing document; it must also set out to fulfill those purposes in order to meet the organizational test.
- (4) Type I (and Type II) supporting organizations may meet exceptions allowing them to designate a beneficiary class or purpose, rather than having to name a specific supported organization. See Treas. Reg. 1.509(a)-4(d).

## A. Law / Authority

- (1) Section 509(a)(3)(A) provides that a supporting organization must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in Section 509(a)(1) or (2).
- (2) The regulations state that if an organization fails either the organizational or the operational test, it will not qualify as a supporting organization. See Treas. Reg. 1.509(a)-4(b)(1).

Note: An organization created prior to January 1, 1970, will satisfy the organizational and operational tests if, on and after January 1, 1970, it meets the tests. See Treas. Reg. 1.509(a)-4(b)(2).

- (3) **In general.** Treas. Reg. 1.509(a)-4(c)(1) states that an organization is organized exclusively for one or more of the purposes of Section 509(a)(3)(A) only if its articles of organization:
  - a. Limit the purposes of the organization to benefiting, performing the functions of, or carrying out the purposes of one or more specified organizations described in Sections 509(a)(1) or (2);
  - b. Do not empower the organization to engage in activities that do not further such purposes;
  - c. Specify the publicly supported organization(s) for which they will operate; and
  - d. Do not empower the organization to operate, support, or benefit any organization other than the specified publicly supported organization(s).

- (4) **Purposes.** The supporting organization's purposes, as stated in its articles, may be only as broad as the purposes stated in Section 509(a)(3)(A) (that is, to be organized and operated exclusively to support or benefit one or more specified publicly supported organizations). Thus, it is permissible verbiage for an organization to specify it is formed for the benefit of one or more specified publicly supported organizations. See Treas. Reg. 1.509(a)-4(c)(2).

A Type I supporting organization meets the requirements if the purposes stated in its articles are similar to, and no broader than, the purposes stated in the articles of its Section 509(a)(1) or 509(a)(2) controlling organization(s).

See the section below called "Additional precedent on purpose" for a discussion of further precedent on this topic.

- (5) **Purposes of a supporting organization operated in conjunction with a publicly supported Section 501(c)(4), (5), or (6) organization.** A supporting organization operated in conjunction with a publicly supported Section 501(c)(4), (5), or (6) organization (which meets the public support tests for Section 509(a)(2) classification), will meet the purpose requirements if its articles require it to carry on charitable, etc., activities within the meaning of Section 170(c)(2). That is, the supporting organization's purposes, as stipulated in its articles, must be those of a Section 501(c)(3) organization: exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

See more in Treas. Reg. 1.509(a)-4(k) and the section below called "Organizations Operated in Conjunction with Certain Section 501(c)(4), (5), or (6) Organizations."

- (6) **Limitations.** An organization will not meet the organizational test if its articles expressly permit it to benefit any organization other than the specified publicly supported organization(s), even if it has in fact limited its activities as such. See Treas. Reg. 1.509(a)-4(c)(3).
- (7) **Specified organizations.** As stated in Treas. Reg. 1.509(a)-4(d)(2)(i), a supporting organization is required to specify the publicly supported organization(s) by name unless it meets certain exceptions.
- (8) **Nondesignated publicly supported organizations.**

Under Treas. Reg. 1.509(a)-4(d)(2)(i), a Type I's articles will not have to designate the supported organization(s) by name if the Type I's articles require it to operate, support, or benefit one or more beneficiary organizations, which it designates by class or purpose. That class or purpose must include that of:

- a. Its controlling organization(s) (that is, its publicly supported organization(s)), or
- b. Other publicly supported organization(s) closely related in purpose to its controlling organization(s).

Under Treas. Reg. 1.509(a)-4(d)(2)(iv), a Type I supporting organization that does not designate its supported organization(s) by name in its articles may still meet the organizational test if:

- a. There has been an historic and continuing relationship between itself and the Section 509(a)(1) or (2) organizations, and
- b. Due to the relationship, there is a substantial identity of interests between the supporting and supported organizations.

Treas. Reg. 1.509(a)-4(d)(2)(iii) provides two examples for nondesignated publicly supported organizations:

- a. An organization described in Section 501(c)(3), operating for the benefit of institutions of higher learning in a particular state, satisfies the organizational test if the institutions, all of which are described in Section 509(a)(1), control the organization, though its articles do not name each institution. Further, the organization's articles also would meet the organizational test if its articles provided for giving scholarships to enable students to attend institutions of higher learning, but only in the designated state.
- b. An organization described in Section 501(c)(3) is organized, operated by, and controlled by representatives of a Section 509(a)(1) church, which operates a home for the aged, satisfies the organizational test even if its articles do not designate the church by name. Because the care of the sick and the aged are long-standing temporal functions and purposes of organized religion, the organization, by operating the home for the aged, the supporting organization is operating to support or benefit the church in carrying out one of its temporal functions.

See the section below called "Additional precedent on nondesignated publicly supported organizations" for a discussion of further precedent on this topic.

- (9) **Substitution of beneficiaries.** A Type I's articles may also permit it to substitute another publicly supported organization, add a new or additional publicly supported organization, or vary the amount of its support among different publicly supported organizations. See Treas. Reg. 1.509(a)-4(d)(3).

In the example in Treas. Reg. 1.509(a)-4(d)(3)(iii), X operates for the benefit of private colleges in the State of Y. If X is controlled by these colleges under Type I and such colleges are all Section 509(a)(1) organizations, X's articles will meet the organizational test even if they permit X to operate for the benefit of any new colleges created in State Y in addition to the existing colleges or in lieu of one which has ceased to operate, or if they permit X to vary its support by paying more to one college than to another in a particular year.

See the section below called "Additional precedent on substitution of beneficiaries" for a discussion of further precedent on this topic.

- (10) **Additional precedent on purpose:**

The Service has taken the position that the supporting organization's organizing document must actually state that the organization is organized exclusively for the benefit of, to perform the functions of or to carry out the purposes of the specified supported organization(s). However, some courts have taken a more expansive view of the language in enabling documents.

- a. In *Trust Under Will of Bella Mabury v. Commissioner*, 80 T.C. 733 (1983), the organization did not meet the supporting organization organizational test because the record before the Tax Court contained no evidence that



two of the three possible beneficiaries designated in the trust's creating instrument were Section 509(a)(1) or (2) organizations. Thus, the court found that the trust instrument expressly empowered the trust to benefit organizations other than "specified" publicly supported organizations. The terms of the decedent's trust described in Section 4947(a)(1) provided that the trust would terminate upon the earlier of (a) the publication of a book by a specified Section 509(a)(1) church, or (b) the expiration of 21 years from the date of the survivor of the persons named in the decedent's will. If (a) occurred, the trust estate would be distributed to the church. If (b) occurred, the trust estate would be distributed to two other organizations designated in the decedent's will, and which were not stipulated as Section 509(a)(1) or 509(a)(2) entities. The Tax Court held that the trust failed the organizational test because the Trust's articles "expressly empower" the trust to benefit organizations other than specified organizations described in Section 509(a)(1) or 509(a)(2).

b. In *Cockerline Memorial Fund v. Commissioner*, 86 T.C. 53 (1986), the Tax Court found that a trust formed to furnish scholarships for residents of Oregon who attend colleges and universities in Oregon, with preference given to students attending Northwest Christian College, had maintained an historic and continuing relationship with the colleges and universities in Oregon that resulted in a substantial identity of interests between it and the supported organizations, which were all Section 509(a)(1) organizations. Facts the court considered significant in making this determination were:

- Since its inception, the trust, in accordance with the creator's will, had distributed all its funds directly to colleges and universities in Oregon.
- Funds were returned if the student on whose behalf they were provided failed to enroll full-time or did not maintain a 2.5 grade point average.
- The trust established a scholarship committee to recommend worthy students attending colleges or universities in Oregon.
- The trust and Northwest Christian College, one member of the class of benefitted publicly supported organizations, maintained a particularly close working relationship.
- The trust and the beneficiaries had a common ultimate goal in educating students in Oregon.

**(11) Additional precedent on nondesignated publicly supported organizations:**

a. In Rev. Rul. 75-436, 1975-2 C.B. 217, an exempt charitable trust was held to be a supporting organization within the meaning of Section 509(a)(3) and is not a private foundation, where its sole purpose was to grant scholarships to students graduating from the public high schools in a

certain city. The trust was trusteeed by the city council with its funds managed by the city treasurer. The city is a Section 509(a)(1) entity because it is a government unit described in Sections 170(b)(1)(A)(v) and 170(c)(1). The organizational test in Treas. Reg. 1.509(a)-4(c)(2) was satisfied because the purpose of the trust (to grant scholarships to students graduating from the public high school in the city) was similar to the educational purpose of the city, as outlined in its charter. While the instant trust was found to be a what is now referred to as a Type I supporting organization, both Type I and Type II may meet exceptions allowing them to designate a beneficiary class or purpose, rather than having to name a specific supported organization. See Treas. Reg. 1.509(a)-4(d).

- b. GCM 36050 (October 9, 1974), non-precedential, which was later published as Rev. Rul. 75-437, 1975-2 C.B. 218, considered the concept of an historic and continuing relationship. Regarding the exception to not specifically designate the supported organization when there is an historic and continuing relationship, as provided in Treas. Reg. 1.509(a)-4(d)(2)(iv), Chief Counsel noted this provision should be applied only in exceptional cases where the relationship between the supporting and supported organizations has continued for many years and is well-known to the public. In concluding that a charitable trust that provided scholarships to graduates of high schools in a particular county did not fit within the exception in Treas. Reg. 1.509(a)-4(d)(2)(iv), Counsel stated that the provision should apply only where the relationship between the organizations is so well-known that there is no need to name the publicly supported organization or organizations.

Note: Although GCMs are non-precedential and can't be cited, GCM 36050, rather than Rev. Rul. 75-437, defines the term historic and continuing relationship and provides the reasoning to apply this standard. Additionally, further information on Rev. Rul. 75-437 is found in TG 3-33: Foundation Classification – Type III Supporting Organizations – IRC Section 509(a)(3).

- c. In Rev. Rul. 79-197, 1979-1 C.B. 204, an organization's articles of organization require it to pay its future income to a specific supported organization named in the articles, until a specific sum is paid. After that, it will pay all its assets to public charities selected by the substantial contributor to the supporting organization. The articles do not require it to be operated to support organizations that are designated by name, class, or purpose. The organization is not a supporting organization described in Section 509(a)(3) because it does not support a supported organization designated by name, class, or purpose.
- d. In Rev. Rul. 81-43, 1981-1 C.B. 350, a community trust described in Treas. Reg. 1.170A-9(e) was created by a community chest to hold permanently endowed charitable funds and to distribute income to support

local public charities. Even though the publicly supported organizations are not specified by name, the community trust does meet the requirements of Section 509(a)(3) because the community chest (the controlling organization) is specified by class or purpose in a manner that satisfies the conditions of Treas. Reg. 1.509(a)-4(d)(2).

- e. In *Change-All Souls Hous. Corp. v. United States*, 671 F.2d 463 (Ct. Cl. 1982), the court considered what an “historic” relationship entailed. The Service argued the plaintiff and their supported organization could not have an historic relationship because the plaintiff was only organized approximately five years prior to the suit. The court countered that the concept of “historic” in the regulation, however, relates to the history of the specific organizations and does not require that the relationship must have existed for any specified time. The plaintiff and their supported organization had been closely associated since the plaintiff was formed, and both served the same objective. There had been “an historic and continuing relationship” between the plaintiff and their supported organization that has resulted in “a substantial identity of interest” between the two organizations, within the regulations.
- f. In *Polm Family Foundation, Inc. v. United States*, 644 F.3d 406 (D.C. Cir. 2011), the plaintiff’s articles did not name supported organization(s), but attempted to designate by class instead. They designated as the class, organizations that “support, promote and/or perform public health and/or Christian objectives, including but not limited to Christian evangelism, edification and stewardship.” The court found that designation did not make beneficiary organizations readily identifiable, there was no geographic limit, and there was no limit by type of publicly supported organization (such as churches or seminaries). In light of those broad purposes, the court found it would be difficult, if not impossible, to determine whether the plaintiff would receive oversight from a readily identifiable class of publicly supported organizations. The plaintiff did not meet the requirements of the organizational test.

**(12) Additional precedent on substitution of beneficiaries:**

In *Quarrie Charitable Fund v United States*, 603 F.2d 1274 (7th Cir., 1979), the trust document allowed the trustee to transfer the income to a different supported organization other than the designated charity when, in the trustee’s discretion, the charitable uses would become unnecessary, undesirable, impractical, or no longer adapted to the needs of the public. The court found that the language failed the organizational requirement of Treas. Reg. 1.509(a)-4(d)(4)(i)(A). The court explained that the problem was not that the charitable use may become impractical or undesirable, but that it was left to the trustee’s discretion. In contrast, the regulations establish objective standards of when the charitable recipient may be changed. The court’s view on the effect of the regulations was:

The organizational test which all supporting organizations must meet aims at a close identification of the supporting organization with its beneficiary. Treas. Reg. 1.509(a)-4(c). A supporting organization is to be linked to a specific public organization. If the linkage is by ownership or mutual control the beneficiary organization need not be named. Treas. Reg. 1.509(a)-4(d)(2). The relationship itself establishes the identification. Where the linkage is pragmatic, however, based on the magnitude of the support and the beneficiary's related dependence, there is not the same sort of identification. In such circumstances the freer the supporting organization to substitute beneficiaries, the weaker will its identification with the beneficiary be. In sum, the beneficiary's power to challenge a decision to substitute does not secure the same linkage as depriving the supporting organization of the power to substitute independently.

#### **IV. Operational Test for Type I**

- (1) A supporting organization must be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations as described in Sections 509(a)(1) or 509(a)(2). If an organization fails to meet the operational test, it cannot qualify as a supporting organization.
- (2) A supporting organization must engage solely in activities that support or benefit its specified supported organizations. These activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by its supported organization(s). The supporting organization also may engage in fundraising activities, such as solicitations, fundraising dinners, and unrelated trade or business, to raise funds for its supported organization(s) or for the permissible beneficiaries.

#### **A. Law / Authority**

- (1) Section 509(a)(3)(A) provides that a supporting organization must be organized, and at all times thereafter, operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, one or more specified organizations described in Section 509(a)(1) or (2).
- (2) Treas. Reg. 1.509(a)-4(b)(1) states if an organization fails either the organizational or the operational test, it will not qualify as a supporting organization.

Note: An organization created prior to January 1, 1970, satisfies the organizational and operational tests if, on and after January 1, 1970, it complies with the tests. See Treas. Reg. 1.509(a)-4(b)(2).

## A.1. Permissible Beneficiaries

- (1) According to Treas. Reg. 1.509(a)-4(e)(1), a supporting organization may only engage solely in activities which support or benefit its specified publicly supported organization(s).
  - a. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by its specified publicly supported organization(s).
  - b. A supporting organization may, for example, make a payment indirectly through another unrelated organization to a member of a charitable class benefited by its specified publicly supported organization, but only if such a payment constitutes a grant to an individual rather than a grant to an organization. To determine whether a grant is indirectly to an individual rather than to an organization, apply the standards of Treas. Reg. 53.4945-4(a)(4).
  - c. A supporting organization may support a different supporting organization that also supports or benefits the instant supporting organization's specified publicly supported organization(s).
  - d. A supporting organization may support state colleges or universities described in Section 511(a)(2)(B).
- (2) However, an organization will not meet the operational test if any part of its activities is in furtherance of a purpose other than supporting or benefiting one or more specified publicly supported organizations.
- (3) In Rev. Rul. 75-436, 1975-2 C.B. 217, an exempt charitable trust was held to be a supporting organization within the meaning of Section 509(a)(3), where its sole purpose was to grant scholarships to students graduating from the public high schools in a certain city, and it was trustee by the city council with its funds managed by the city treasurer. The city is an entity described Section 509(a)(1) because it is a government unit described in Sections 170(b)(1)(A)(v) and 170(c)(1). The operational test in Treas. Reg. 1.509(a)-4(c)(2) was satisfied because the activity of the trust (to grant scholarships to students graduating from the public high school in the city) benefited individual members of the charitable class benefited by the city through its school system.
- (4) **Supporting foreign organizations.** A domestic charitable organization, organized and operated in support of a foreign organization described under Section 501(c)(3), may qualify as a Type I or Type II Section 509(a)(3) supporting organization. See Rev. Rul. 74-229, 1974-1 C.B. 142.

However, any such supported organization must be described in Section 509(a)(1) or (2), whether or not the organization has received a determination letter. Sections 508(a) and (b) do not apply to foreign organizations described in Section 4948(b) (foreign organizations which have received substantially all of their support other than gross investment income from sources outside the United States). For supported organizations excepted from Sections 508(a) and

(b) that do not have a determination letter, the supporting organization should maintain information sufficient to establish the status of such organizations.

In addition, in order to qualify for deductible contributions under Section 170, the supporting organization must retain control and discretion over any funds distributed to a foreign supported organization. Contributions to a supporting organization operated to benefit one or more foreign organizations that control it, however, generally will not be deductible under Section 170. See Rev. Rul. 63-252, 1963-2 C.B. 101, amplified by Rev. Rul. 66-79, 1966-1 C.B. 48.

## **A.2. Permissible Activities**

- (1) Treas. Reg. 1.509(a)-4(e)(2) states a supporting organization is not required to pay over its income to the publicly supported organizations to meet the operational test.
  - a. A supporting organization may use its income to carry on an independent activity or program which supports or benefits its specified supported organization(s) when all support is limited to permissible beneficiaries.
  - b. A supporting organization may also engage in fundraising activities for its supported organization(s) or for its permissible beneficiaries. Examples include solicitations, fundraising dinners, and unrelated trade or business.
- (2) Treas. Reg. 1.509(a)-4(e)(3) provides examples that consider the operational test:
  - a. In Example 1, M is a separately incorporated, Section 501(c)(3) alumni association of X University. X University is designated in M's articles as the sole beneficiary of its support. M uses all of its dues and income to support its own program of educational activities for alumni, faculty, and students of X University and to encourage alumni to maintain a close relationship with the university and to make contributions to it. M does not distribute any of its income directly to X. M pays no part of its funds to, or for the benefit of, any organization other than X. M meets the operational test, even though it does not pay over any of its funds to X because it carries on a program which both supports and benefits X, its designated supported organization.
  - b. In Example 3, P is an organization described in Section 501(c)(3). Its primary activity is providing financial assistance to S, its designated publicly supported organization which aids underdeveloped nations in Central America. However, P also makes a small annual general-purpose grant to T, a private foundation engaged in work similar to that carried on by S. T performs a particular function that assists in the overall aid program carried on by S. Even though P is operating primarily for the benefit of S, its designated supported organization, P does not meet the operational test because of its grant to T, a private foundation.
  - c. Example 4 assumes the same facts as Example 3, except T is a Section 501(c)(3) organization, other than a private foundation, and is a supporting

organization to S. Under these circumstances, P will meet the operational test.

- d. Example 5 assumes the same facts as Example 3, except instead of the annual general-purpose grant made to T, each grant made by P to T is specifically earmarked for the training of social workers and teachers, designated by name, from Central America. Under these circumstances, P's grants to T would be treated as grants to the individual social workers and teachers under Section 4945(d)(3) and Treas. Reg. 53.4945-4(a)(4), rather than as grants to T private foundation under Section 4945(d)(4). Because these social workers and teachers are individuals part of the charitable class benefitted by S, P would meet the operational test.

### **A.3. Organizations Operated in Conjunction with Certain Section 501(c)(4), (5), or (6) Organizations**

- (1) A 509(a)(3) supporting organization may support an organization described in Section 501(c)(4), (c)(5), or (c)(6) if that supported organization would also be described as publicly supported under Section 509(a)(2) (if it were a Section 501(c)(3) organization). Thus, the Section 501(c)(4), (c)(5), or (c)(6) organization must meet the one-third support test and the not-more-than-one-third support test described in Treas. Reg. 1.509(a)-3(a). See Treas. Reg. 1.509(a)-4(k)(1).
- (2) In an example, X is a Section 501(c)(6) medical association supported by membership dues and funds from exempt function activities. X organizes and operates an endowment fund for the purpose of advancing medical education. This support makes up more than one-third of X's support and therefore it would meet the support test under Section 509(a)(2) if it were a Section 501(c)(3) organization rather than a Section 501(c)(6) organization. Thus, if a Section 501(c)(3) organization supports a charitable program of X, the Section 501(c)(3) organization could qualify as a Section 509(a)(3) if it meets all other requirements under Section 509(a)(3) and the related regulations, while treating X as if it were an organization described in Section 509(a)(2). See Treas. Reg. 1.509(a)-4(k)(2).

Note: While the regulations first mention this exception to support certain Section 501(c)(4), (c)(5), or (c)(6) organizations under the organizational test, there are also operational test considerations.

- (3) In Rev. Rul. 76-401, 1976-2 C.B. 175, an organization formed for educational and charitable purposes that was controlled by a civic league exempt under Section 501(c)(4) qualified as a supporting organization based on its relationship with the Section 501(c)(4) organization. The organization granted college scholarships to students graduating from local high schools. The civic league elected five of the organization's seven trustees, and the remaining two trustees were the president and treasurer of the league. None of the trustees were disqualified persons with respect to the organization, except in their capacity as trustees. The civic league met the public support requirements for

classification as an organization described in Section 509(a)(2). This ruling notes that, while the exception to allow supporting organizations to support certain Section 501(c)(4), (c)(5), and (c)(6) organizations resides under the organizational test in the regulations, it is equally applicable in determining whether a supporting organization satisfies that operational test.

- (4) See the section above called “Purposes of a supporting organization operated in conjunction with a publicly supported Section 501(c)(4), (5), or (6) organization” for the requirements to meet the organizational test.

## V. Relationship Requirement for Type I

- (1) A specific type of shared governance relationship is required to satisfy each supporting organization Type (I, II, or III).
- (2) These relationships ensure that the supporting organization will be responsive to the needs or demands of its publicly supported organization(s) and that the supporting organization will constitute an integral part of, or maintain significant involvement in, the operations of its publicly supported organization(s).

### A. Law / Authority

- (1) Section 509(a)(3)(B) states a Type I supporting organization must be operated, supervised, or controlled by one or more of its supported organizations.
- (2) **Type I relationship, in general.** Treas. Reg. 1.509(a)-4(f)(4) states the distinguishing feature of a Type I relationship is the presence of a substantial degree of direction by the publicly supported organization(s) over the conduct of the supporting organization.
- (3) **Meaning of *operated, supervised, or controlled by*.** Treas. Reg. 1.509(a)-4(g)(1)(i) provides that:
  - a. A Type I relationship presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations.
  - b. The relationship required is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable to, the parent organization.
  - c. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization must be appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.



- (4) Treas. Reg. 1.509(a)-4(g)(2) provides examples of organizations that satisfy the “operated, supervised, or controlled by” Type I relationship requirement:
- a. A university press is operated to perform the university’s printing and publishing and is controlled by a board of governors appointed by the university’s board of trustees.
  - b. A scientific study council organized under the joint sponsorship of several independent, publicly supported scientific organizations engages in research, planning, and evaluation in the social sciences and sponsors or arranges conferences, seminars, and similar programs for scholars and social scientists.
- (5) **Alternate Type I relationship.** Treas. Reg. 1.509(a)-4(g)(1)(ii) states that a supporting organization may still meet the Type I relationship test even when its governing body is not comprised of representatives of its *specified* publicly supported organizations.

A supporting organization may have a Type I relationship (operated, supervised, or controlled by) with one or more publicly supported organizations and be operated for the benefit of one or more *different* publicly supported organizations only if it can demonstrate that the purposes of the former organization(s) (controlling organization(s)) are carried out by benefitting the latter organizations (specified publicly supported organizations).

The example in Treas. Reg. 1.509(a)-4(g)(2)(iii) demonstrates this circumstance. Z is the supporting organization, whose trustees are appointed by M university, a publicly supported organization. Z pays over all its net income for medical research to three hospitals, which are the publicly supported organizations specified in its trust. The hospitals allow M university’s faculty to use their research facilities. Z is found to have a Type I relationship (operated, supervised, or controlled by) with M, even though it is operated for the benefit of the three hospitals designated in its trust.

## A.1. Prohibition on Contributions from Controlling Donors

- (1) Section 509(f)(2) and Treas. Reg. 1.509(a)-4(f)(5) state that an organization is not a Type I supporting organization if it accepts a gift or contribution from any person described in Section 509(f)(2)(B). Those prohibited sources are:
- (i) A person (other than an organization described in Section 509(a)(1), (a)(2), or (a)(4)) who directly or indirectly controls, either alone or together with persons described in the item (ii) or (iii) below, the governing body of the supported organization;
  - (ii) A member of the family (per Section 4958(f)(4)) of an individual described in item (i) above; or
  - (iii) A 35% controlled entity in which persons described in item (i) or (ii) above own more than 35% of the total:
    - Combined voting power (for a corporation),

- Profits and interest (for a partnership), or
  - Beneficial interest (for a trust or estate).
- (2) Treas. Reg. 1.509(a)-4(f)(5)(ii) provides the definition of the term *control* for the purposes of this paragraph.

## VI. Control Test

- (1) A supporting organization may not be controlled directly or indirectly by one or more disqualified persons (other than foundation managers or one or more publicly supported organizations).

### A. Law / Authority

- (1) Section 509(a)(3)(C) and Treas. Reg. 1.509(a)-4(j)(1) state a supporting organization may not be controlled directly or indirectly by one or more disqualified persons (as defined in Section 4946) other than foundation managers and other than one or more publicly supported organizations.
- (2) For purposes of the control test, as described in Section 4946(a), disqualified persons are the following persons:
- a. A substantial contributor to the supporting organization. (A substantial contributor is a person who has given more than \$5,000 to the supporting organization if this amount is also more than 2% of the total amount given by the end of the taxable year.)
  - b. A creator of a trust that is a substantial contributor to the supporting organization.
  - c. An owner of more than 20% of the:
    - combined voting power of a corporation,
    - profit interest of a partnership, or
    - beneficial interest of a trust or unincorporated enterprise,
 which is a substantial contributor to the supporting organization.
  - d. A family member of one of the above individuals. (Family includes only a spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.)
  - e. A corporation, partnership, or trust in which one of the above persons owns more than 35% of the combined voting power, profit interest, or beneficial interest.
- (3) If someone who is a disqualified person to a supporting organization, such as a substantial contributor, is appointed to the role of foundation manager, they are still a disqualified person, according to Treas. Reg. 1.509(a)-4(j)(1).

One way a supporting organization will be considered to be controlled is if the disqualified persons (by aggregating their votes or positions of authority) could compel the supporting organization to perform (or prevent) any act which significantly affects its operation. (This includes that no substantial contributor nor their spouse may designate annually the recipients for the portion of their contribution from among the supported organizations.)

A supporting organization is considered to be controlled directly or indirectly by disqualified persons if the voting power of such persons is 50% or more of the total voting power of the organization's governing body, or if one or more of such persons have the right to exercise veto power over the actions of the organization.

The regulations provide the example that if the governing body of an organization is composed of five trustees, none of whom has veto power over the actions of the organization, and no more than two trustees are at any time disqualified persons, the organization will not be considered to be controlled directly or indirectly by one or more disqualified persons by reason of this fact alone. See Treas. Reg. 1.509(a)-4(j)(1).

- (4) However, in determining whether a disqualified person does in fact indirectly control an organization, all pertinent facts and circumstances including the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting rights with respect to stocks in which members of its governing body also have some interest, will be taken into consideration. See Treas. Reg. 1.509(a)-4(j)(1).
- (5) An organization is permitted to try to prove to the satisfaction of the Commissioner that disqualified persons do not directly or indirectly control it. The regulations provide an example of an organization, which based on facts and circumstances, proved it was not controlled by disqualified persons due to its division of control over policies and decisions. See Treas. Reg. 1.509(a)-4(j)(2).
- (6) **Additional precedent on the control test:**
  - a. In Rev. Rul. 80-207, 1980-2 C.B. 113, an organization that makes distributions to a university did not qualify as a supporting organization within the meaning of Section 509(a)(3) because it was found to be indirectly controlled by a disqualified person and the employees of a disqualified person. Two of the four supporting organization directors were also employees of a corporation in which a substantial contributor to the organization owned more than 35% of the voting power of the corporation. The substantial contributor was also a director of the supporting organization. Because of the employment relationship of the two employee board members, Rev. Rul. 80-207 concluded the supporting organization was controlled indirectly by the disqualified persons.

- b. In Rev. Rul. 80-305, 1980-2 C.B. 71, a trust that was funded by multiple donors, and each donor had the right to designate charitable recipients of the income and corpus of the trust attributable to their own contribution, did not meet the requirements of Section 509(a)(3) because its donors were allowed to designate recipients, which constitutes control by substantial contributors who are disqualified persons.
- c. In *Polm Fam. Found., Inc. v. United States*, 655 F. Supp. 2d 125 (D.D.C. 2009), *aff'd* on different grounds, 644 F.3d 406 (D.C. Cir. 2011), the court found the plaintiff failed the control test. Mr. Polm, a disqualified person, held all the power to appoint all directors, including managing directors, to the foundation's board. Additionally, two of the three initial directors were disqualified persons. Of this, the court stated, "In light of the Treasury Regulations governing what amounts to "control" with respect to Section 509(a)(3)(C), the Court considers the extensive power and authority of Mr. Polm to constitute indirect control over the Foundation in violation of Section 509(a)(3)(C)."

## **VII. Examination Techniques**

- (1) The information in this section is intended to guide the examiner in identifying and developing issues particular to Section 509(a)(3) Type I supporting organizations. These guidelines are meant to supplement the guidelines provided by IRM 4.70, TE/GE Examinations, and are not all-inclusive nor meant to limit the examiner in identifying issues nor using additional examination and legal resources (for example, CPE articles, examination tools and techniques, etc.) that are not included here.

### **A. Organizational Test Considerations**

- (1) The supporting organization's governing documents must:
  - a. Limit the purposes of the organization to benefiting, performing the functions of, or carrying out the purposes of one or more specified organizations described in Sections 509(a)(1) or (2). Ensure that there is a statement indicating that the supporting organization is organized and operated exclusively for the benefit of a publicly supported organization.
  - b. Designate the specified publicly supported organization. Review the organizing documents to ensure the publicly supported organization is a named beneficiary or that it designates an appropriate purpose or class. See section "Organizational Test for Type I" above.
  - c. Not benefit any organization other than those listed. Review the organizing document to verify the supporting organization is not empowered to support or benefit any organization other than those publicly supported organizations already specified.

## **B. Operational Test Considerations**

- (1) Review the organization's activities to ensure they are limited to support the purposes of benefiting, performing the functions of, or carrying out the purposes of one or more specified organizations described in Sections 509(a)(1) or (2).
- (2) Ensure payments are made solely to permissible beneficiaries:
  - a. Interview the organization
  - b. Review meeting minutes
  - c. Review cash disbursements, cancelled checks, invoices, etc.
- (3) If the supporting organization conducts an independent activity or program, perform an operational review of the activities to determine if the activities actually serve the exempt purposes of the beneficiary. The supporting organization may also engage in fundraising activities to raise funds for the permissible beneficiaries.

## **C. Relationship Requirement Considerations**

- (1) In order to determine if the organization meets the relationship requirement under Type I, the examiner must review the relationship:
  - a. Interview the organization to verify a majority of the organization's board of directors has been appointed by or elected by properly authorized officials of the supported organization.
  - b. Review the governing documents to ensure such control is documented.

## **D. Control Test Considerations**

- (1) Ensure disqualified persons do not control the supporting organization, directly or indirectly. Disqualified persons include all persons listed in Section 4946, except Section 509(a)(1) and 509(a)(2) organizations or a foundation manager of the supporting organization who is not a disqualified person for another reason.
- (2) Review board minutes, organizing documents, and financial documents to verify disqualified persons do not have more than 50% of the voting power or if one or more of such persons have the right to exercise veto power over the actions of the supporting organization.
- (3) Look at the members and determine if they are controlled, directly or indirectly, by disqualified persons (for example, an employer/employee relationship outside of the supporting and supported organization context).

## **E. Excise Tax Considerations**

- (1) Section 4958(c)(3)(A) states the following are excess benefit transactions for Section 509(a)(3) organizations:
  - a. Any grant, loan, compensation, or other similar payment provided by such organization to a person described in Section 4958(c)(3)(B), and

- b. Any loan provided by such organization to a disqualified person (other than an organization described in Section 4958(c)(3)(C)(ii)), and
- c. The “excess benefit” includes the amount of any such grant, loan, compensation, or other similar payment.

For more information, refer to TG 65: Excess Benefit Transactions – IRC Section 4958.

(2) Regarding Section 4958, Taxes on excess benefit transactions:

- a. Identify grants, loans, compensation, or other similar payments to substantial contributors, members of their families, or their 35% controlled entities and loans to disqualified persons.
- b. Review Form 990-series returns for items that could indicate issues, including:
  - Supporting organization made loans to disqualified persons or substantial contributors;
  - Grants or other assistance were provided to disqualified persons or substantial contributors;
  - Compensation to disqualified persons or substantial contributors; or
  - Loans or receivables from disqualified persons, substantial contributors, or their related parties.

Note: Organizations are required to report transactions with interested parties, including excess benefit transactions, loans, grants, assistance, and business transactions on Schedule L.

- c. Review compensation paid to identify payments to individuals listed above.
- d. Examine disbursements. Look for payment of expenses to or for the benefit of disqualified persons, substantial contributors, or their related parties.
- e. Analyze grants to identify recipients that are substantial contributors or their related parties.
- f. Review loans and notes receivable for loans to disqualified persons, substantial contributors, or their related parties.

Note: Transactions that are not grants, loans, compensation, or other similar payments are still subject to the general rules of Section 4958. See TG 65: Excess Benefit Transactions – IRC Section 4958 for further information.

## VIII. Other Considerations

### A. Application and Foundation Classification

- (1) An organization may request recognition of Section 509(a)(3) classification by one of the following:
  - a. When applying for recognition of exemption from federal tax, it will apply electronically on [www.Pay.gov](http://www.Pay.gov) by submitting Form 1023, Application for Recognition of Section 501(c)(3) Exemption, Schedule D to Form 1023, all required supplemental information according to the instructions, and the correct user fee.  
  
Note: Organizations requesting classification as Section 509(a)(3) organizations are not eligible to use Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. See Rev. Proc. 2024-5 (updated annually).
  - b. When requesting a change in foundation classification, it will file Form 8940, Request for Miscellaneous Determination, electronically on [www.Pay.gov](http://www.Pay.gov) with all required supplemental information according to the instructions and the correct user fee.  
  
Note: A nonexempt charitable trust described in Section 4947(a)(1) may also request a determination that it is described in Section 509(a)(3), even though it has not been recognized as a 501(c)(3) organization, by filing Form 8940.
- (2) An organization that fails to meet the requirements for classification as a supporting organization might, based on facts and circumstances, qualify under another foundation classification, such as Section 509(a)(2) or Section 170(b)(1)(A)(vi), or even as a private foundation.
- (3) An adverse determination as to an organization's requested foundation classification is appealable. See Section 9, Procedures for Adverse Determination Letter, and Section 10, Declaratory Judgement Provisions of Section 7428, of Rev. Proc. 2024-5, 2024-1 I.R.B. 262 (updated annually).

### B. Filing Requirements

- (1) Each Section 509(a)(3) supporting organization is required to file Form 990 or 990-EZ with the IRS on an annual basis, regardless of the organization's gross receipts, unless it qualifies as one of the following:
  - a. An integrated auxiliary of a church described in Treas. Reg. 1.6033-2(h);
  - b. The exclusively religious activities of any religious order; or
  - c. A supporting organization, the gross receipts of which are normally not more than \$5,000, that supports a Section 501(c)(3) religious organization. These organizations must submit Form 990-N (e-Postcard) unless it voluntarily files Form 990 or 990-EZ.

See Sections 6033(a), 6033(i), and 6033(l), and Treas. Regs. 1.6033-2(g), 1.6033-2(h), and 1.6033-6(b)(3).

- (2) The organization's gross receipts and its total assets determine which Form 990-series return it must file. IRS.gov's page "Form 990 Series - Which Forms Do Exempt Organizations File - Filing Phase In" provides a chart on gross receipts and asset levels.
- (3) On Schedule A (Form 990 or 990-EZ), Public Charity Status and Public Support, a supporting organization will:
  - a. List the organizations to which it provides support;
  - b. Indicate whether it is a Type I, Type II, or Type III supporting organization; and
  - c. Certify that the organization isn't controlled directly or indirectly by disqualified persons (other than by foundation managers and other than one or more publicly supported organizations).
- (4) Section 501(c)(3) supporting organizations are subject to automatic revocation under Section 6033(j). See IRS.gov's page "Automatic Exemption Revocation for Non-Filing: Frequently Asked Questions" for more information.
- (5) Organizations with unrelated business taxable income must electronically file Form 990-T, Exempt Organization Business Income Tax Return, and electronically pay any required periodic estimated tax payments.
- (6) Organizations with employees must file employment tax returns and unemployment tax returns and electronically pay any required periodic tax deposits. See Publication 15 (Circular E), Employer's Tax Guide, for more information.

## C. Resources





- (1) Publication 557, Tax-Exempt Status for Your Organization
- (2) 2004 CPE, Supporting Organization Reference Guide IRC 509(a)(3) Foundation Status Classification, "Special Health Care Issues" section
- (3) Articles on IRS.gov:
  - a. "Section 509(a)(3) Supporting Organizations"
  - b. "Supporting Organizations – Requirements and Types"
  - c. "Annual Filing Requirements for Supporting Organizations"
  - d. "Exempt Organizations Annual Reporting Requirements – Form 990, Schedules A and B: Reporting "Issues for Section 509(a)(3) Supporting Organizations"
  - e. "Forms 990, 990-EZ and 990-N – 509(a)(3) Supporting Organizations"




## IX. Exhibits

### A. Exhibit 1: Resource Matrix & Symbol Legend

- (1) This table is the legend for symbols used in Exhibits B-E of this Technical Guide.
- (2) As used in the other Exhibits, each symbol illustrates from which of the four tests (organizational, operational, relationship requirement, or control) the coded item stems.

Symbol	Tests and Related Treasury Regulation Sections	TG Section	Supporting Org. Type(s)
	<b>Organizational Test</b> <ul style="list-style-type: none"> <li>• 1.509(a)-4(a), In general</li> <li>• 1.509(a)-4(b), Organizational and operational tests</li> <li>• 1.509(a)-4(c), Organizational test</li> <li>• 1.509(a)-4(d), Specified organizations</li> <li>• 1.509(a)-4(k), Organizations operated in conjunction with certain section 501(c)(4), (5), or (6) organizations</li> </ul>	III	I, II, III
	<b>Operational Test</b> <ul style="list-style-type: none"> <li>• 1.509(a)-4(a), In general</li> <li>• 1.509(a)-4(b), Organizational and operational tests</li> <li>• 1.509(a)-4(e), Operational test</li> </ul>	IV	I, II, III
	<b>Relationship Requirement</b> <ul style="list-style-type: none"> <li>• 1.509(a)-4(a), In general</li> <li>• 1.509(a)-4(f), Nature of relationship required between organizations</li> <li>• 1.509(a)-4(g), Meaning of operated, supervised, or controlled by (Type I.)</li> <li>• 1.509(a)-4(h), Meaning of supervised or controlled in connection with (Type II. See TG 3-32.)</li> <li>• 1.509(a)-4(i), Meaning of operated in connection with (Type III. See TG 3-33.)</li> </ul>	V	I, II, III
	<b>Additional Type III Relationship Requirements</b> <ul style="list-style-type: none"> <li>• 1.509(a)-4(a), In general</li> <li>• 1.509(a)-4(i), Meaning of operated in connection with</li> <li>• 1.509(a)-4(i)(2), Notification requirement</li> <li>• 1.509(a)-4(i)(3), Responsiveness test</li> <li>• 1.509(a)-4(i)(4), Functionally integrated</li> <li>• 1.509(a)-4(i)(5), Non-functionally integrated</li> </ul>	V in TG 3-33	III

	<b>Control Test</b> <ul style="list-style-type: none"><li>• 1.509(a)-4(a), In general</li><li>• 1.509(a)-4(j), Control by disqualified persons</li></ul>	VI	I, II, III
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## **B. Exhibit 2: Form 1023 Schedule D with Symbols**

- (1) This exhibit contains Schedule D, Section 509(a)(3) Supporting Organizations, of Form 1023, Application for Exemption under Section 501(c)(3) of the Internal Revenue Code of 1986.
- (2) Symbols are used to illustrate from which of the four tests (Organizational, Operational, Relationship Requirement, or Control) the coded items stem. Symbol legend is in Exhibit 1 of this Technical Guide.
- (3) Exhibit begins on next page.

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**Schedule D. Section 509(a)(3) Supporting Organizations**

**1** List the names, addresses, and EINs of the organizations you support.

**2** Are all your supported organizations public charities under section 509(a)(1) or (2)? If "Yes," continue to Line 3.

Yes  No

**2a** Are your supported organizations tax exempt under section 501(c)(4), 501(c)(5), or 501(c)(6) and do your supported organizations meet the public support test under section 509(a)(2)? If "No," explain how each organization you support is a public charity under section 509(a)(1) or 509(a)(2).

Yes  No

**3** Which of the following describes your relationship with your supported organization(s)?

- A majority of your governing board or officers are elected or appointed by your supported organization(s). (Type I supporting organization)
- Your control or management is vested in the same persons who control or manage your supported organization(s). (Type II supporting organization)
- One or more of your officers, directors, or trustees are elected or appointed by the officers, directors, trustees, or membership of your supported organization(s), or one or more of your officers, directors, trustees, or other important office holders, are also members of the governing body of your supported organization(s), or your officers, directors, or trustees maintain a close and continuous working relationship with the officers, directors, or trustees of your supported organization(s). (Type III supporting organization)

**4** Describe how your governing board and officers are selected. If you are a Type III organization, also describe how your officers, directors, or trustees maintain a close and continuous working relationship with the officers, directors, or trustees of your supported organization(s).

**Schedule D. Section 509(a)(3) Supporting Organizations** (continued)

- 5** Do any persons who are disqualified persons (except individuals who are disqualified persons only because they are foundation managers) with respect to you or persons who have a family or business relationship with any disqualified persons appoint any of your foundation managers? If "Yes," (1) describe the process by which disqualified persons appoint any of your foundation managers, (2) provide the names of these disqualified persons and the foundation managers they appoint, and (3) explain how control is vested over your operations (including assets and activities) by persons other than disqualified persons.  Yes  No

- 6** Do any persons who are disqualified persons (except individuals who are disqualified persons only because they are foundation managers) have any influence regarding your operations, including your assets or activities? If "Yes," (1) provide the names of these disqualified persons, (2) explain how influence is exerted over your operations (including assets and activities), and (3) explain how control is vested over your operations (including assets and activities) by individuals other than disqualified persons.  Yes  No

- 7** Does your organizing document specify your supported organization(s) by name?  Yes  No  
 If "Yes" and you selected Type I above, continue to Line 8.  
 If "Yes," and you selected Type II, do not complete the rest of Schedule D.  
 If "No" and you selected Type III above, amend your organizing document to specify your supported organization(s) by name or you will not meet the organizational test and need to reconsider your requested public charity classification; then continue to Line 8.

- 7a** Does your organizing document name a similar purpose or charitable class of beneficiaries as to your supported organization(s)? If "No," amend your organizing document to specify your supported organization(s) by name, purpose, or class or you will not meet the organizational test and need to reconsider your requested public charity classification.  Yes  No

If you selected Type II above, do not complete the rest of Schedule D.

- 8** Do you or will you receive contributions from any person who alone, or combined with family members or an entity at least 35% controlled by that person, controls any of your supported organizations, or will you receive contributions from any family member of, or an entity at least 35% controlled by, any person who controls any of your supported organizations? If "Yes," explain.  Yes  No

If you selected Type I above, do not complete the rest of Schedule D.

**Schedule D. Section 509(a)(3) Supporting Organizations** *(continued)*

**9** Do the officers, directors, or trustees of your supported organization have a significant voice in your investment policies, the timing and making of grants, the selection of grant recipients, and in otherwise directing the use of your income or assets? If "Yes," explain.  Yes  No

**10** In each taxable year, do you or will you provide each of your supported organizations with (a) a written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support you provided to the supported organization during the immediately preceding taxable year, (b) a copy of your most recently filed Form 990-series return or notice, and (c) a copy of your governing documents? If 'No,' explain.  Yes  No

**11** Do you exercise a substantial degree of direction over the policies, programs, and activities of your supported organization(s) and appoint or elect (directly or indirectly) a majority of the officers, directors, or trustees of your supported organization(s)? If "Yes," explain.  Yes  No

**12** Do substantially all of your activities directly further the exempt purposes of one or more supported organizations to which you are responsive by performing the functions of, or carrying out the purposes of, such supported organization(s) and but for your involvement would normally be engaged in by such supported organization(s). If "Yes," explain and do not complete the rest of Schedule D.  Yes  No

**Schedule D. Section 509(a)(3) Supporting Organizations** *(continued)*

**13** Do you distribute at least 85% of your annual net income or 3.5% of the aggregate fair market value of all of your non-exempt-use assets (whichever is greater) to your supported organization(s)? If "No," explain.  Yes  No

[Empty text box for explanation]

**13a** How much do you contribute annually to each supported organization?

[Empty text box for contribution amount]

**13b** What is the total annual revenue of each supported organization?

[Empty text box for total annual revenue]

**13c** Do you or the supported organization(s) earmark your funds for support of a particular program or activity? If "Yes," explain.  Yes  No

[Empty text box for earmarking explanation]

### **C. Exhibit 3: Form 990 Schedule A with Symbols**

- (1) This exhibit contains Schedule A, Public Charity Status and Public Support, of Form 990.
- (2) This exhibit is not the entire Schedule A, but rather features the sections that apply specifically to Section 509(a)(3) supporting organizations. The sections applying to Sections 509(a)(1), 509(a)(2), and 170(b)(1)(A) have been hidden or the pages have been removed entirely.
- (3) Symbols are used to illustrate from which of the four tests (organizational, operational, relationship requirement, or control) the coded items stem. Symbol legend is in Exhibit 1 of this Technical Guide.
- (4) Exhibit begins on next page.

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**Public Charity Status and Public Support**

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ.

▶ Go to [www.irs.gov/Form990](http://www.irs.gov/Form990) for instructions and the latest information.

Name of the organization

Employer identification number

**Part I Reason for Public Charity Status.** (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)



**12**  An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2)**. See **section 509(a)(3)**. Check the box on lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.

**a**  **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**

**b**  **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**

**c**  **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**

**d**  **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**

**e**  Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

**f** Enter the number of supported organizations . . . . .




















**g** Provide the following information about the supported organization(s).

	(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1–10 above (see instructions))	(iv) Is the organization listed in your governing document?		(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
				Yes	No		
(A)							
(B)							
(C)							
(D)							
(E)							
<b>Total</b>							

**Part IV Supporting Organizations**


(Complete only if you checked a box in line 12 on Part I. If you checked box 12a, Part I, complete Sections A and B. If you checked box 12b, Part I, complete Sections A and C. If you checked box 12c, Part I, complete Sections A, D, and E. If you checked box 12d, Part I, complete Sections A and D, and complete Part V.)

**Section A. All Supporting Organizations**



	Yes	No
 <b>1</b> Are all of the organization's supported organizations listed by name in the organization's governing documents? If "No," describe in <b>Part VI</b> how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.		
 <b>2</b> Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2)? If "Yes," explain in <b>Part VI</b> how the organization determined that the supported organization was described in section 509(a)(1) or (2).		
 <b>3a</b> Did the organization have a supported organization described in section 501(c)(4), (5), or (6)? If "Yes," answer lines 3b and 3c below.		
 <b>b</b> Did the organization confirm that each supported organization qualified under section 501(c)(4), (5), or (6) and satisfied the public support tests under section 509(a)(2)? If "Yes," describe in <b>Part VI</b> when and how the organization made the determination.		
 <b>c</b> Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? If "Yes," explain in <b>Part VI</b> what controls the organization put in place to ensure such use.		
 <b>4a</b> Was any supported organization not organized in the United States ("foreign supported organization")? If "Yes," and if you checked box 12a or 12b in Part I, answer lines 4b and 4c below.		
 <b>b</b> Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? If "Yes," describe in <b>Part VI</b> how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.		
 <b>c</b> Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? If "Yes," explain in <b>Part VI</b> what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.		
 <b>5a</b> Did the organization add, substitute, or remove any supported organizations during the tax year? If "Yes," answer lines 5b and 5c below (if applicable). Also, provide detail in <b>Part VI</b> , including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).		
 <b>b</b> <b>Type I or Type II only.</b> Was any added or substituted supported organization part of a class already designated in the organization's organizing document?		
 <b>c</b> <b>Substitutions only.</b> Was the substitution the result of an event beyond the organization's control?		
 <b>6</b> Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? If "Yes," provide detail in <b>Part VI</b> .		
 <b>7</b> Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (as defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? If "Yes," complete Part I of Schedule L (Form 990).		
 <b>8</b> Did the organization make a loan to a disqualified person (as defined in section 4958) not described on line 7? If "Yes," complete Part I of Schedule L (Form 990).		
 <b>9a</b> Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons, as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? If "Yes," provide detail in <b>Part VI</b> .		
 <b>b</b> Did one or more disqualified persons (as defined on line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? If "Yes," provide detail in <b>Part VI</b> .		
 <b>c</b> Did a disqualified person (as defined on line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? If "Yes," provide detail in <b>Part VI</b> .		
 <b>10a</b> Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? If "Yes," answer line 10b below.		
 <b>b</b> Did the organization have any excess business holdings in the tax year? (Use Schedule C, Form 4720, to determine whether the organization had excess business holdings.)		




**Part IV Supporting Organizations** *(continued)*

		Yes	No
	<b>11</b> Has the organization accepted a gift or contribution from any of the following persons?		
	<b>a</b> A person who directly or indirectly controls, either alone or together with persons described on lines 11b and 11c below, the governing body of a supported organization?	<b>11a</b>	
	<b>b</b> A family member of a person described on line 11a above?	<b>11b</b>	
	<b>c</b> A 35% controlled entity of a person described on line 11a or 11b above? <i>If "Yes" to line 11a, 11b, or 11c, provide detail in Part VI.</i>	<b>11c</b>	




**Section B. Type I Supporting Organizations**

		Yes	No
	<b>1</b> Did the governing body, members of the governing body, officers acting in their official capacity, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's officers, directors, or trustees at all times during the tax year? <i>If "No," describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove officers, directors, or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.</i>	<b>1</b>	
	<b>2</b> Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? <i>If "Yes," explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.</i>	<b>2</b>	




**Section C. Type II Supporting Organizations**

		Yes	No
	<b>1</b> Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? <i>If "No," describe in Part VI how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).</i>	<b>1</b>	

**Section D. All Type III Supporting Organizations**

		Yes	No
	<b>1</b> Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (i) a written notice describing the type and amount of support provided during the prior tax year, (ii) a copy of the Form 990 that was most recently filed as of the date of notification, and (iii) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?	<b>1</b>	
	<b>2</b> Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? <i>If "No," explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).</i>	<b>2</b>	
	<b>3</b> By reason of the relationship described on line 2, above, did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? <i>If "Yes," describe in Part VI the role the organization's supported organizations played in this regard.</i>	<b>3</b>	

**Section E. Type III Functionally Integrated Supporting Organizations**

	<b>1</b> Check the box next to the method that the organization used to satisfy the Integral Part Test during the year ( <i>see instructions</i> ).		
<b>a</b>	<input type="checkbox"/> The organization satisfied the Activities Test. Complete <b>line 2</b> below.		
<b>b</b>	<input type="checkbox"/> The organization is the parent of each of its supported organizations. Complete <b>line 3</b> below.		
<b>c</b>	<input type="checkbox"/> The organization supported a governmental entity. Describe in <b>Part VI</b> how you supported a governmental entity ( <i>see instructions</i> ).		
	<b>2</b> Activities Test. <b>Answer lines 2a and 2b below.</b>		
<b>a</b>	Did substantially all of the organization's activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? <i>If "Yes," then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.</i>	<b>2a</b>	
<b>b</b>	Did the activities described on line 2a, above, constitute activities that, but for the organization's involvement, one or more of the organization's supported organization(s) would have been engaged in? <i>If "Yes," explain in Part VI the reasons for the organization's position that its supported organization(s) would have engaged in these activities but for the organization's involvement.</i>	<b>2b</b>	
	<b>3</b> Parent of Supported Organizations. <b>Answer lines 3a and 3b below.</b>		
<b>a</b>	Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? <i>If "Yes" or "No," provide details in Part VI.</i>	<b>3a</b>	
<b>b</b>	Did the organization exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations? <i>If "Yes," describe in Part VI the role played by the organization in this regard.</i>	<b>3b</b>	

**Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations**

- 1**  Check here if the organization satisfied the Integral Part Test as a qualifying trust on Nov. 20, 1970 (*explain in Part VI*). See instructions. All other Type III non-functionally integrated supporting organizations must complete Sections A through E.

<b>Section A—Adjusted Net Income</b>		(A) Prior Year	(B) Current Year (optional)
<b>1</b>	Net short-term capital gain	<b>1</b>	
<b>2</b>	Recoveries of prior-year distributions	<b>2</b>	
<b>3</b>	Other gross income (see instructions)	<b>3</b>	
<b>4</b>	Add lines 1 through 3.	<b>4</b>	
<b>5</b>	Depreciation and depletion	<b>5</b>	
<b>6</b>	Portion of operating expenses paid or incurred for production or collection of gross income or for management, conservation, or maintenance of property held for production of income (see instructions)	<b>6</b>	
<b>7</b>	Other expenses (see instructions)	<b>7</b>	
<b>8</b>	<b>Adjusted Net Income</b> (subtract lines 5, 6, and 7 from line 4)	<b>8</b>	

<b>Section B—Minimum Asset Amount</b>		(A) Prior Year	(B) Current Year (optional)
<b>1</b>	Aggregate fair market value of all non-exempt-use assets (see instructions for short tax year or assets held for part of year):		
<b>a</b>	Average monthly value of securities	<b>1a</b>	
<b>b</b>	Average monthly cash balances	<b>1b</b>	
<b>c</b>	Fair market value of other non-exempt-use assets	<b>1c</b>	
<b>d</b>	<b>Total</b> (add lines 1a, 1b, and 1c)	<b>1d</b>	
<b>e</b>	<b>Discount</b> claimed for blockage or other factors ( <i>explain in detail in Part VI</i> ):		
<b>2</b>	Acquisition indebtedness applicable to non-exempt-use assets	<b>2</b>	
<b>3</b>	Subtract line 2 from line 1d.	<b>3</b>	
<b>4</b>	Cash deemed held for exempt use. Enter 0.015 of line 3 (for greater amount, see instructions).	<b>4</b>	
<b>5</b>	Net value of non-exempt-use assets (subtract line 4 from line 3)	<b>5</b>	
<b>6</b>	Multiply line 5 by 0.035.	<b>6</b>	
<b>7</b>	Recoveries of prior-year distributions	<b>7</b>	
<b>8</b>	<b>Minimum Asset Amount</b> (add line 7 to line 6)	<b>8</b>	

<b>Section C—Distributable Amount</b>			Current Year
<b>1</b>	Adjusted net income for prior year (from Section A, line 8, column A)	<b>1</b>	
<b>2</b>	Enter 0.85 of line 1.	<b>2</b>	
<b>3</b>	Minimum asset amount for prior year (from Section B, line 8, column A)	<b>3</b>	
<b>4</b>	Enter greater of line 2 or line 3.	<b>4</b>	
<b>5</b>	Income tax imposed in prior year	<b>5</b>	
<b>6</b>	<b>Distributable Amount.</b> Subtract line 5 from line 4, unless subject to emergency temporary reduction (see instructions).	<b>6</b>	
<b>7</b>	<input type="checkbox"/> Check here if the current year is the organization's first as a non-functionally integrated Type III supporting organization (see instructions).		



**Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations** *(continued)*

**Section D – Distributions**

Current Year

<b>1</b>	Amounts paid to supported organizations to accomplish exempt purposes	<b>1</b>
<b>2</b>	Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity	<b>2</b>
<b>3</b>	Administrative expenses paid to accomplish exempt purposes of supported organizations	<b>3</b>
<b>4</b>	Amounts paid to acquire exempt-use assets	<b>4</b>
<b>5</b>	Qualified set-aside amounts (prior IRS approval required— <i>provide details in Part VI</i> )	<b>5</b>
<b>6</b>	Other distributions ( <i>describe in Part VI</i> ). See instructions.	<b>6</b>
<b>7</b>	<b>Total annual distributions.</b> Add lines 1 through 6.	<b>7</b>
<b>8</b>	Distributions to attentive supported organizations to which the organization is responsive ( <i>provide details in Part VI</i> ). See instructions.	<b>8</b>
<b>9</b>	Distributable amount for 2021 from Section C, line 6	<b>9</b>
<b>10</b>	Line 8 amount divided by line 9 amount	<b>10</b>

**Section E – Distribution Allocations** (see instructions)

(i)  
Excess Distributions

(ii)  
Underdistributions  
Pre-2021

(iii)  
Distributable  
Amount for 2021

<b>1</b>	Distributable amount for 2021 from Section C, line 6		
<b>2</b>	Underdistributions, if any, for years prior to 2021 (reasonable cause required— <i>explain in Part VI</i> ). See instructions.		
<b>3</b>	Excess distributions carryover, if any, to 2021		
<b>a</b>	From 2016 . . . . .		
<b>b</b>	From 2017 . . . . .		
<b>c</b>	From 2018 . . . . .		
<b>d</b>	From 2019 . . . . .		
<b>e</b>	From 2020 . . . . .		
<b>f</b>	<b>Total</b> of lines 3a through 3e		
<b>g</b>	Applied to underdistributions of prior years		
<b>h</b>	Applied to 2021 distributable amount		
<b>i</b>	Carryover from 2016 not applied (see instructions)		
<b>j</b>	Remainder. Subtract lines 3g, 3h, and 3i from line 3f.		
<b>4</b>	Distributions for 2021 from Section D, line 7: \$		
<b>a</b>	Applied to underdistributions of prior years		
<b>b</b>	Applied to 2021 distributable amount		
<b>c</b>	Remainder. Subtract lines 4a and 4b from line 4.		
<b>5</b>	Remaining underdistributions for years prior to 2021, if any. Subtract lines 3g and 4a from line 2. For result greater than zero, <i>explain in Part VI</i> . See instructions.		
<b>6</b>	Remaining underdistributions for 2021. Subtract lines 3h and 4b from line 1. For result greater than zero, <i>explain in Part VI</i> . See instructions.		
<b>7</b>	<b>Excess distributions carryover to 2022.</b> Add lines 3j and 4c.		
<b>8</b>	Breakdown of line 7:		
<b>a</b>	Excess from 2017 . . . . .		
<b>b</b>	Excess from 2018 . . . . .		
<b>c</b>	Excess from 2019 . . . . .		
<b>d</b>	Excess from 2020 . . . . .		
<b>e</b>	Excess from 2021 . . . . .		



**Part VI**


**Supplemental Information.** Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; Part III, line 12; Part IV, Section A, lines 1, 2, 3b, 3c, 4b, 4c, 5a, 6, 9a, 9b, 9c, 11a, 11b, and 11c; Part IV, Section B, lines 1 and 2; Part IV, Section C, line 1; Part IV, Section D, lines 2 and 3; Part IV, Section E, lines 1c, 2a, 2b, 3a, and 3b; Part V, line 1; Part V, Section B, line 1e; Part V, Section D, lines 5, 6, and 8; and Part V, Section E, lines 2, 5, and 6. Also complete this part for any additional information. (See instructions.)



Area with horizontal dashed lines for supplemental information.


## D. Exhibit 4: Form 1023 Schedule D and Form 990 Schedule A Questions Organized into the Four Tests


- (1) This chart organizes the questions, as published in Form 1023's Schedule D and Form 990's Schedule A, into each of the four supporting organization tests.
- (2) Symbols are used to illustrate from which of the four tests the coded items stem. Symbol legend is in Exhibit 1 of this Technical Guide.

 <b>Organizational Test</b>	
<b>Form 1023, Schedule D</b>	
Line 1.	List the names, addresses, and EINs of the organizations you support.
Line 2a.	Are your supported organizations tax exempt under Section 501(c)(4), 501(c)(5), or 501(c)(6) and do your supported organizations meet the public support test under Section 509(a)(2)? If "No," explain how each organization you support is a public charity under Section 509(a)(1) or 509(a)(2).
Line 7.	Does your organizing document specify your supported organization(s) by name? If "Yes" and you selected Type I above, continue to Line 8.
Line 7a.	Does your organizing document name a similar purpose or charitable class of beneficiaries as to your supported organization(s)? If "No," amend your organizing document to specify your supported organization(s) by name, purpose, or class or you will not meet the organizational test and need to reconsider your requested public charity classification.
<b>Form 990, Schedule A</b>	
<b>Part I</b>	
Line 12.	An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in Section 509(a)(1) or Section 509(a)(2). See Section 509(a)(3). Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.
Line 12g.	(i) Name of supported organization; (ii) EIN; (iii) Type of organization; (iv) Is the organization listed in your governing document? (v) Amount of monetary support; and (vi) Amount of other support.
<b>Part IV, Section A</b>	
Line 1.	Are all of the organization's supported organizations listed by name in the organization's governing documents? If "No," describe in Part VI how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.
Line 3a.	Did the organization have a supported organization described in Section 501(c)(4), (5), or (6)? If "Yes," answer (b) and (c) below.

Line 3b.	Did the organization confirm that each supported organization qualified under Section 501(c)(4), (5), or (6) and satisfied the public support tests under Section 509(a)(2)? If "Yes," describe in Part VI when and how the organization made the determination.
Line 3c.	Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? If "Yes," explain in Part VI what controls the organization put in place to ensure such use.
Line 5a.	Did the organization add, substitute, or remove any supported organizations during the tax year? If "Yes, answer (b) and (c) below (if applicable). Also, provide detail in Part VI, including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).
Line 5b.	Type I or Type II only. Was any added or substituted supported organization part of a class already designated in the organization's organizing document?
Line 5c.	Substitutions only. Was the substitution the result of an event beyond the organization's control?
<b>Operational Test</b>	
<b>Form 1023, Schedule D</b>	
Line 2.	Are all your supported organizations public charities under Section 509(a)(1) or (2)?
<b>Form 990, Schedule A</b>	
<b>Part I</b>	
Line 12.	An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in Section 509(a)(1) or Section 509(a)(2). See Section 509(a)(3). Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.
<b>Part IV, Section A</b>	
Line 2.	Did the organization have any supported organization that does not have an IRS determination of status under Section 509(a)(1) or (2)? If "Yes," explain in Part VI how the organization determined that the supported organization was described in Section 509(a)(1) or (2).
Line 4a.	Was any supported organization not organized in the United States ("foreign supported organization")? If "Yes," and if you checked 12a or 12b in Part I, answer (b) and (c) below.
Line 4b.	Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? If "Yes," describe in Part VI how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.
Line 4c.	Did the organization support any foreign supported organization that does not have an IRS determination under Sections 501(c)(3) and 509(a)(1) or (2)? If "Yes," explain in Part VI what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for Section 170(c)(2)(B) purposes.



Line 6.	Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? If "Yes," provide detail in Part VI.
Line 7.	Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (as defined in Section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).
Line 8.	Did the organization make a loan to a disqualified person (as defined in Section 4958) not described in line 7? If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).
 <b>Relationship Requirement</b>	
<b>Form 1023, Schedule D</b>	
Line 3.	Which of the following describes your relationship with your supported organization(s)? Option 1. A majority of your governing board or officers are elected or appointed by your supported organization(s). (Type I supporting organization)
Line 4.	Describe how your governing board and officers are selected.
Line 8.	Do you or will you receive contributions from any person who alone, or combined with family members or an entity at least 35% controlled by that person, controls any of your supported organizations, or will you receive contributions from any family member of, or an entity at least 35% controlled by, any person who controls any of your supported organizations?
<b>Form 990, Schedule A</b>	
<b>Part I</b>	
Line 12.	An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in Section 509(a)(1) or Section 509(a)(2). See Section 509(a)(3). Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.
Line 12a.	Type I. A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. You must complete Part IV, Sections A and B.
<b>Part IV, Section A</b>	
Line 11.	Has the organization accepted a gift or contribution from any of the following persons?
Line 11a.	A person who directly or indirectly controls, either alone or together with persons described in (b) and (c) below, the governing body of a supported organization?
Line 11b.	A family member of a person described in (a) above?
Line 11c.	A 35% controlled entity of a person described in (a) or (b) above? If "Yes" to a, b, or c, provide detail in Part VI.

<b>Part VI, Section B - Type I Supporting Organizations</b>	
Line 1.	Did the directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? If "No," describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.
Line 2.	Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? If "Yes," explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.
 <b>Control Test</b>	
<b>Form 1023, Schedule D</b>	
Line 5.	Do any persons who are disqualified persons (except individuals who are disqualified persons only because they are foundation managers) with respect to you or persons who have a family or business relationship with any disqualified persons appoint any of your foundation managers? If "Yes," (1) describe the process by which disqualified persons appoint any of your foundation managers, (2) provide the names of these disqualified persons and the foundation managers they appoint, and (3) explain how control is vested over your operations (including assets and activities) by persons other than disqualified persons.
Line 6.	Do any persons who are disqualified persons (except individuals who are disqualified persons only because they are foundation managers) have any influence regarding your operations, including your assets or activities? If "Yes," (1) provide the names of these disqualified persons, (2) explain how influence is exerted over your operations (including assets and activities), and (3) explain how control is vested over your operations (including assets and activities) by individuals other than disqualified persons.
<b>Form 990, Schedule A</b>	
<b>Part IV, Section A</b>	
Line 9a.	Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons as defined in Section 4946 (other than foundation managers and organizations described in Section 509(a)(1) or (2))? If "Yes," provide detail in Part VI.
Line 9b.	Did one or more disqualified persons (as defined in line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? If "Yes," provide detail in Part VI.
Line 9c.	Did a disqualified person (as defined in line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? If "Yes," provide detail in Part VI.

## **E. Exhibit 5: Guide Sheet with Symbols – Section 509(a)(3) Type I Supporting Organizations**

- (1) Guide sheet can be employed to determine whether each of the four tests (organizational, operational, relationship requirement, and control) is met, or whether issues may need to be developed.
- (2) Symbols are used to illustrate from which of the four tests the coded items stem. Symbol legend is in Exhibit 1 of this Technical Guide.
- (3) Exhibit begins on next page.

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# Guide Sheet

## Section 509(a)(3) Type I Supporting Organizations “Operated, Supervised, or Controlled by”

**Organization Name** \_\_\_\_\_

**EIN** \_\_\_\_\_

**Specialist Name** \_\_\_\_\_





**Date** \_\_\_\_\_

### Part 1 – Overview

A Type I supporting organization is (1) organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, one or more qualifying supported organizations; (2) operated, supervised, or controlled by its supported organization(s); and (3) not controlled by certain disqualified persons.

An organization seeking to qualify as a Type I supporting organization must satisfy an Organizational Test, an Operational Test, a Relationship Requirement, and a Control Test. In addition, the organization must satisfy the general requirements applicable to all public charities (no inurement, limited lobbying, no political intervention, etc.). This guide sheet does not directly address those additional general requirements.

For the organization to qualify as a Type I supporting organization, each of **A** through **E** must be answered “Yes.” In answering question **E**, consider the additional circumstances discussed in Part 6 below.

Results – Supporting Organization Tests for Type I		Yes	No
<b>A</b> 	Does the organization satisfy the <b>Organizational Test</b> ? (See Part 2 below.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b> 	Does the organization satisfy the <b>Operational Test</b> ? (See Part 3 below.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b> 	Does the organization satisfy the <b>Relationship Requirement</b> ? (See Part 4 below.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>D</b> 	Does the organization satisfy the <b>Control Test</b> ? (See Part 5 below.)	<input type="checkbox"/>	<input type="checkbox"/>



Results – Consideration of Facts and Circumstances		Yes	No
<b>E</b>	Based on all the <b>facts and circumstances</b> , including the circumstances described in Part 6 below, does the organization appear to be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more qualifying supported organization(s), and to be operated, supervised, or controlled by its supported organization(s)?	<input type="checkbox"/>	<input type="checkbox"/>

## Part 2 – Organizational Test

### Section I – Overview

For the organization to satisfy the Organizational Test as a Type I supporting organization, the organization must satisfy a Specified Supported Organizations Test and a Purposes Test.



Each of **A** and **B** below must be answered “Yes.”

Results – Organizational Test		Yes	No
<b>A</b> 	Does the organization satisfy the Specified Supported Organizations Test? (See Part 2, Section II below.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b> 	Does the organization satisfy the Purposes Test? (See Part 2, Section III below.)	<input type="checkbox"/>	<input type="checkbox"/>

### Section II – Specified Supported Organizations

A Type I supporting organization must support one or more specified organizations. The supported organization(s) must meet certain criteria.

One of **A**, **A(1)**, or **B** must be answered “Yes,” and both **C** and **D** must be answered “No.”




Specified Supported Organizations Criteria		Yes	No
<b>A</b> 	Does the supporting organization’s organizing document specify its supported organization(s) by name?	<input type="checkbox"/>	<input type="checkbox"/>
<b>A(1)</b> 	If the supporting organization’s organizing document does not specify its supported organization(s) by name, do the supporting organization and the supported organization(s) have an historic and continuing relationship such that there is a substantial identity of interests between the two?  (See discussion of GCM 36050 in this TG.)	<input type="checkbox"/>	<input type="checkbox"/>

<p><b>B</b></p>	<p>Does the supporting organization’s organizing document identify its supported organization(s) by class or purpose?</p> <p>(The “class or purpose” designation provides Type I supporting organizations a greater degree of flexibility to address changes in circumstances. For example, a supporting organization formed to support homeless shelters in a metropolitan area may want to ensure that it can support new homeless shelters established in the area after the supporting organization was founded. Control by the supported organization(s) over the supporting organization’s governing body helps ensure that this flexibility will not be abused.)</p> <p>Each of <b>B(1)</b> and <b>B(2)</b> must be answered “Yes.”</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>B(1)</b></p>	<p>Does the class of supported organizations so designated include the supported organization(s) that operate, supervise, or control the supporting organization, or publicly supported organizations which are closely related in purpose or function to such organization(s)?</p> <p>(For example, an organization that supports a school, where the school has the power to remove and replace a majority of the supporting organization’s directors, may also support a Section 509(a)(1) organization within the designated class that improves educational opportunities for potential students in the same community as the school.)</p> <p>(See Treas. Reg. 1.509(a)-4(d)(2)(i).)</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>B(2)</b></p>	<p>Are the specific supported organizations designated by class or purpose readily identifiable (for example, by including a geographic limit or a limit by type of supported organization)?</p> <p>(See Treas. Reg. 1.509(a)-4(d)(2)(i); Rev. Rul. Rev. Rul. 81-43, 1981-1 C.B. 350; and Polm Family Foundation, Inc. v. United States, 644 F.3d 406 (D.C.Cir. 2011).)</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>C</b></p>	<p>Does the supporting organization support any organization other than:</p> <ul style="list-style-type: none"> <li>• Section 509(a)(1) organizations;</li> <li>• Section 509(a)(2) organizations;</li> <li>• Organizations that both (a) are described in Sections 501(c)(4), (5), or (6) and (b) meet the “one-third” tests applicable to Section 509(a)(2) organizations (Treas. Reg. 1.509(a)-4(k)(1); or</li> <li>• Foreign organizations described in Section 509(a)(1) or (2), whether or not such organizations have received a determination letter from the IRS? (See Rev. Rul. 74-229, 1974-1 C.B. 142.)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>D</b></p>	<p>Does the supporting organization’s organizing document expressly empower it to operate to support or benefit any organization other than a publicly supported organization specified by name, purpose, or class in its organizing document?</p>	<input type="checkbox"/>	<input type="checkbox"/>

### Section III – Purposes

The purposes of a Type I supporting organization may not be broader than the purposes of its supported organization(s). Special rules apply if the supporting organization supports a Section 501(c)(4), (5), or (6) organization.




To satisfy this test, either **A** or **B** must be answered “Yes,” and **C** must be answered “No.”

Purposes Criteria		Yes	No
<b>A</b> 	Does the supporting organization’s organizing document limit its purposes to provide that it is organized, and at all times thereafter is operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, its supported organization(s)?	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b> 	If the organization supports one or more Section 501(c)(4), (5), or (6) organizations, does the supporting organization meet the Purposes Test with regard to such supported organizations by stating in its organizing document that it will carry on exclusively activities that are religious, charitable, scientific, literary, educational, or for the prevention of cruelty to children or animals within the meaning of Section 170(c)(2)?	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b> 	Does the supporting organization’s organizing document expressly empower it to engage in activities which are not in furtherance of the purposes stated in A. or B. above (whichever applies)?	<input type="checkbox"/>	<input type="checkbox"/>

### Part 3 – Operational Test

A Type I supporting organization must engage solely in activities which support or benefit its specified supported organization(s).

**A** must be answered “No,” and each of **B** and **C** must be answered “Yes.” If the organization supports one or more Section 501(c)(4), (5), or (6) organizations, **D** must also be answered “Yes.”

Operational Test Criteria		Yes	No
<b>A</b> 	Does the supporting organization make any grants other than grants to or for the use of, or provide any services or facilities for anyone other than: <ul style="list-style-type: none"> <li>• Its supported organization(s);</li> <li>• Individual members of the charitable class benefited by one or more of its supported organizations;</li> <li>• Other supporting organizations that also support or benefit one or more of the applicant organization’s supported organizations; or</li> <li>• State colleges or universities described in Section 511(a)(2)(B)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b> 	If the supporting organization engages in fundraising activities or unrelated trade or business, does it do so exclusively to raise funds for the permissible beneficiaries described in A. above?	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b> 	Based on all the facts and circumstances, does the supporting organization engage solely in activities which support or benefit its supported organization(s)?  (See Treas. Reg. 1.509(a)-4(e) and Rev. Rul. 75-436, 1975-2 C.B. 217.)	<input type="checkbox"/>	<input type="checkbox"/>

<b>D</b>	<p>If the supporting organization supports one or more Section 501(c)(4), (5), or (6) organizations, does the supporting organization have sufficient safeguards to ensure its support is used exclusively for charitable purposes? (See Rev. Rul. 68-489, 1968-2 C.B. 210, and Rev. Rul. 76-401, 1976-2 C.B. 175.)</p>	<input type="checkbox"/>	<input type="checkbox"/>
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## Part 4 – Relationship Requirement

The supported organization(s) must have a substantial degree of direction over the policies, programs, and activities of the Type I supporting organization, in a way that ensures that the supporting organization is responsive to the needs or demands of one or more supported organizations and will constitute an integral part of, or maintain a significant involvement in, the operations of one or more supported organizations. In addition, the supporting organization must not receive contributions from certain donors.

### Section I – General Requirements

**A** must be answered “No.” **B** and **C** must be answered “Yes.”

General Requirements of Relationship Requirement		Yes	No
<b>A</b> 	<p>Does the supporting organization accept gifts or contributions from any person (other than a public charity described in Section 509(a)(1), (2), or (4)) who directly or indirectly controls (alone, or together with family members or a 35% controlled organization) the governing body of a supported organization? (See Section 509(f)(2) and Treas. Reg. 1.509(a)-4(f)(5).)</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b> 	<p>Do the officers, directors, trustees, or membership of one or more supported organization(s) have the power to appoint or elect a majority of the officers, directors, or trustees of the supporting organization? (See Treas. Reg. 1.509(a)-4(g)(2) for examples of structures illustrating the required relationship.)</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b> 	<p>Based on all of the facts and circumstances, including the factors discussed in Part 6, Section IV, below, does it appear that the supported organization(s) have a substantial degree of direction over the policies, programs and activities of the supporting organization, that the supporting organization is responsive to the needs and demands of one or more of its supported organizations, and that the supporting organization constitutes an integral part of, or maintains a significant involvement in, the operations of one or more of its supported organizations? (See Treas. Reg. 1.509(a)-4(g)(2) for examples of structures illustrating the required relationship.)</p>	<input type="checkbox"/>	<input type="checkbox"/>

### Section II – Factors Warranting Additional Consideration

Regardless of the manner in which a supporting organization satisfies the relationship requirement described in Section I above, the supported organization(s) must have a substantial degree of direction over the policies, programs, and activities of the supporting organization. In addition, the supporting organization must in fact be responsive to the needs and demands of one or more of its supported organizations, and must constitute an integral part of, or maintain a significant involvement in, the operations of one or more of its supported organizations. Treas. Reg. 1.509(a)-4(f)(3); Quarrie v.



Commissioner, 603 F.2d 1274, 1277-78 (7<sup>th</sup> Cir. 1979) (“Supporting organizations are similarly excepted [from private foundation status] in so far as they are subject to the scrutiny of a public charity. The Treasury Regulations therefore provide that the supporting organization must be responsive to the needs of the public charity and intimately involved in its operations.”). Only then can the supporting organization truly be “operated, supervised, or controlled by” its supported organization.

Treas. Reg. 1.509(a)-4(g)(1)(i) states that this relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations. However, this sentence must be understood in the context of the preceding sentence in the regulations, requiring “substantial direction” by the supported organization(s), Treas. Reg. 1.509(a)-4(f)(3), and the statutory requirement to which it relates, that the supporting organization be operated, supervised, or controlled by the supported organization. A bare appointment power that does not result in the requisite integration and responsiveness and that does not confer on the supported organization(s) a substantial degree of direction does not satisfy the relationship requirement. For example, indefinite appointments with no power to replace appointees may indicate that the responsiveness and integral part relationships are too weak to provide the supported organization with substantial direction over the supporting organization’s activities.


Typically (although not always) directors or trustees share equal power with other directors or trustees. The powers delegated to individual officers (President, Treasurer, Secretary, etc.), however, typically varies dramatically. If power to appoint a majority of officers is limited to officers with little control over the activities and assets of the organization, the power may not provide the supported organization(s) with substantial direction over the supporting organization’s activities.






In addition, officers typically are appointed by the board of directors. If a supporting organization is relying on the power to appoint officers as satisfying the relationship requirement, carefully review the extent to which the officers are in fact answerable to someone other than the supported organization making the appointment.

If a supporting organization is relying on the power to appoint directors or trustees, and if those directors or trustees have differing degrees of control over the supporting organization (for example, if there are different classes or types of directors or trustees), the power to appoint a majority of them may not in fact provide those holding the power with substantial direction over the supporting organization’s activities and assets.

If a supported organization’s ability to appoint or replace an officer, director, or trustee is shared with someone not affiliated with the supported organization (for example, if another party must approve, or has veto or removal power), the supported organization’s influence over the supporting organization’s activities may be diluted or effectively eliminated. Review carefully any factors indicating that the appointee may not truly be answerable to the supported organization. Such factors may indicate that the appointment power does not in fact result in responsiveness to the needs or demands of the supported organization, and in the supporting organization serving as an integral part of the supported organization.

If any of **A** through **F** below is answered “Yes,” pay particular attention to the relationship between the supporting organization and its supported organization(s) to ensure that one or more supported organizations has the effective and ongoing ability to operate, control, or supervise the supporting organization.




Factors Related to Relationship Requirement		Yes	No
<b>A</b> 	Is operation, supervision, or control of the supporting organization divided among multiple supported organizations? (See Treas. Reg. 1.509(a)-4(g)(1)(ii); examples under Treas. Reg. 1.509(a)-4(g)(2).)	<input type="checkbox"/>	<input type="checkbox"/>

 <b>B</b>	Are officers, directors, or trustees appointed to serve indefinitely or for multi-year terms, with no or limited power by the supported organization(s) to remove appointees?	<input type="checkbox"/>	<input type="checkbox"/>
 <b>C</b>	Do the supported organization(s) have no or limited power to replace appointees who cease to serve for any reason (such as resignation, removal, death, or expiration of term of office)?	<input type="checkbox"/>	<input type="checkbox"/>
 <b>D</b>	Is the appointment power limited to officers, rather than directors or trustees?	<input type="checkbox"/>	<input type="checkbox"/>
 <b>E</b>	Are there different classes of directors or trustees, with different authority with regard to the operations of the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>
 <b>F</b>	Are there any conditions on the exercise of a supported organization's powers to appoint and to replace (upon removal, resignation, or expiration of a term of office) officers, directors, or trustees, including, for example, periods of time during which either power may not be exercised, "for cause" limitations on any removal power, or consent or veto rights over either power held by persons not affiliated with the supported organization(s)?	<input type="checkbox"/>	<input type="checkbox"/>

### Part 5 – Control Test

A supporting organization may not be controlled directly or indirectly by disqualified persons (other than foundation managers or one or more publicly supported organizations).

**A** through **F** below must be answered "No." **G** through **M** below are facts and circumstances questions that require additional consideration if answered "Yes."

Control Test Criteria		Yes	No
 <b>A</b>	Is the supporting organization controlled directly or indirectly by disqualified persons because disqualified persons on the governing board can potentially aggregate their votes together to control the operations of the supporting organization?  (See <i>Polm Fam. Found., Inc. v. United States</i> , 655 F. Supp. 2d 125 (D.D.C. 2009), <i>aff'd</i> , 644 F.3d 406 (D.C. Cir. 2011).)	<input type="checkbox"/>	<input type="checkbox"/>
 <b>B</b>	Is the supporting organization controlled directly or indirectly by disqualified persons because disqualified persons on the governing board can potentially aggregate their votes together with other board members or employees who are controlled by or beholden to the disqualified persons to control the operations of the supporting organization?  (See <i>Rev. Rul. 80-207</i> , 1980-2 C.B. 113.)	<input type="checkbox"/>	<input type="checkbox"/>
 <b>C</b>	Do disqualified persons have the right to appoint the nominating committee or successor governing board members?	<input type="checkbox"/>	<input type="checkbox"/>

<b>D</b> ★	Is the supporting organization controlled directly by disqualified persons because the disqualified persons have 50% of the voting power on the governing board?	<input type="checkbox"/>	<input type="checkbox"/>
<b>E</b> ★	Is the supporting organization controlled directly or indirectly by disqualified persons because disqualified persons have veto power over any significant activity of the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>
<b>F</b> ★	Is the supporting organization controlled indirectly because disqualified persons control the primary assets of the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>
<b>G</b> ★	Does a disqualified person own a general partnership interest in a limited partnership in which the supporting organization owns an interest? (The general partner of a limited partnership generally is responsible for the management of the partnership, and usually the general partner makes most of or all of the important decisions for the partnership, including the distribution of income to partners. Consider whether the partnership represents a significant enough asset of the supporting organization that the general partner's exercise of control over the partnership allows that general partner to require the supporting organization to perform any act that significantly affects its operation or may prevent the supporting organization from performing such an act. This may be true even if the general partner only holds a 1% interest in the partnership.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>H</b> ★	Does a disqualified person own an interest of 51% or more of the voting stock of a corporation in which the supporting organization is a stockholder? (As an example, if a disqualified person holds 85% of the stock of a closely held corporation and transfers 5% of such stock to the supporting organization, which constitutes the supporting organization's only or primary asset, the 80% ownership of the corporation may allow the disqualified person to effectively influence the economic rights associated with ownership of a minority interest in the corporation, such as the 5% stock held by the supporting organization.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>I</b> ★	Does a disqualified person hold 51% or more control of a corporation through a voting trust or other voting arrangement in which the supporting organization is a stockholder? (Control of a closely held corporation might also be maintained through a voting trust or voting rights. Thus, if the supporting organization owns 90% of the stock of a closely held corporation and the disqualified person holds only 5% of the stock, the disqualified person might still be entitled to maintain voting control of such corporation through a voting trust arrangement or other voting rights.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>J</b> ★	Does a disqualified person have a controlling interest in a limited liability company (LLC) in which the supporting organization has an interest?	<input type="checkbox"/>	<input type="checkbox"/>
<b>K</b> ★	Does a disqualified person have an ownership interest in assets such as real estate, insurance, artwork, collectibles, intellectual property, promissory notes, or other assets in which the supporting organization also has an interest?	<input type="checkbox"/>	<input type="checkbox"/>

<b>L</b> ★	Do donors or their family members have the right to provide advice to the supporting organization regarding investments or grant making?	<input type="checkbox"/>	<input type="checkbox"/>
<b>M</b> ★	Taking into account all of the facts and circumstances, including information described in <b>G</b> through <b>f</b> above, are disqualified persons in a position to directly or indirectly control the decisions made by the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>

## Part 6 – Consideration of Facts and Circumstances

Most Type I supporting organizations further legitimate charitable purposes. However, the events leading up to enactment of the Pension Protection Act revealed the potential for supporting organizations to be used by donors to obtain a charitable deduction while retaining control of donated assets. As noted below, the Pension Protection Act added special provisions to Section 4958 that apply to supporting organization transactions with disqualified persons, as well as making the Section 4943 excess business holdings rules apply to certain supporting organizations. The questions below are aimed at identifying situations involving these Pension Protection Act provisions, as well as those that raise potential for impermissible inurement, private benefit, and other abuses. Additional questions needed to develop an issue should be tailored to the organization's specific situation.

### Section I – Compensation / Loans

The Pension Protection Act of 2006 tightened the rules regarding grants, loans, compensation, or other similar payments provided by supporting organizations to substantial contributors (defined in Section 4958(c)(3)(C)), certain family members (defined in Section 4958(f)(4)), and entities in which such persons hold 35% or more of the voting, economic or beneficial interests. Under Section 4958(c)(3), any such payments are considered *per se* excess benefits in their entirety, regardless of the fairness or reasonableness of the payments, and are subject to the taxes described in Section 4958(a). The answer to these questions may be grounds for denial due to private benefit and/or inurement under Section 501(c)(3) (in the case of a Form 1023 application), failure of the operational test or disqualified person control test under Section 509(a)(3) (in the case of Form 1023 or Form 8940), or a referral to examination. Therefore, give extra consideration if one or more of **A**, **B**, or **C** below is answered "Yes."

Compensation / Loans Considerations		Yes	No
<b>A</b>	Is any grant, loan, compensation, or other similar payment provided to a substantial contributor (defined in Section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to the substantial contributor? Under Section 4958(c)(3)(A)(i)(I), such payments are excess benefit transactions subject to tax.	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b>	Is any loan provided to a disqualified person (defined in Section 4958(f)(1))? Under Section 4958(c)(3)(A)(i)(II), such loans are excess benefit transactions subject to tax.	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b>	Is any payment, service, or loan not part of a reasonable compensation arrangement provided to any private person, including a disqualified person, an employee, an independent contractor, or a person with whom a donor or a family member of a donor has a business relationship?	<input type="checkbox"/>	<input type="checkbox"/>

## Section II – Assets Warranting Additional Consideration

Certain asset arrangements may benefit donors or other private persons. Of particular concern, are assets over which a disqualified person may assert control (addressed in Part 5 above), that do not generate substantial income and cannot readily be used for exempt purposes, or that otherwise appear to be held for other than exempt purposes. The answer to these questions may be grounds for denial due to private benefit under Section 501(c)(3) (in the case of a Form 1023 application), failure of the operational test or disqualified person control test under Section 509(a)(3) (in the case of Form 1023 or Form 8940), or a referral to examination. Give extra consideration if **A** or **B** below is answered “Yes.”

Assets Warranting Additional Consideration		Yes	No
<b>A</b>	Does the supporting organization own illiquid assets (real estate, closely held stock, private equity investments, partnership or limited liability company interests, etc.) that are not explained in detail, that do not generate substantial income and cannot readily be used for exempt purposes, or that appear to be held for reasons other than furthering the organization’s exempt purposes?	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b>	Does the supporting organization own, by itself or together with any disqualified persons, more than 20% of the stock of a corporation, partnership interest, or beneficial interest of an estate?	<input type="checkbox"/>	<input type="checkbox"/>