



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

September 24, 2007

MEMORANDUM FOR MANAGER, EO DETERMINATIONS

FROM: Robert Choi
Director, EO Rulings and Agreements

SUBJECT: Supporting Organizations IRC § 509(a)(3)

This memorandum transmits guidelines for processing requests from organizations for foundation status classification under §509(a)(3) of the Internal Revenue Code. The guidelines are set forth in the attachments to this memorandum, as described below:

1. IRC 509(a)(3) Supporting Organizations Guide Sheet
2. Supporting Organizations Guide Sheet Explanation

This memorandum also supersedes a memorandum from Acting Director, Exempt Organizations, Rulings and Agreements, dated Feb. 22, 2007, suspending the issuance of determination letters to organizations seeking "functionally integrated Type III supporting organization" status by providing updated procedures on processing requests from organizations that seek "functionally integrated Type III supporting organization" status.

The Pension Protection Act of 2006, Pub. L. No. 109-208 (PPA of 2006) enacted certain requirements that affect all §509(a)(3) supporting organizations. It also effectively created a new category of Type III supported organization, the functionally integrated Type III supporting organization, which is not subject to some of the more restrictive PPA of 2006 requirements.

Until final guidance is issued that defines functionally integrated Type III supporting organizations as described in § 509(d) and §4943(f)(5)(B), the IRS is generally suspending the issuance of determination letters to this category of Type III organizations other than organizations that choose to meet the advance notice of proposed rulemaking.¹ The ANPRM sets forth criteria for qualifying as a functionally integrated Type III supporting organization. If a Type III supporting organization chooses to meet the ANPRM, IRS may issue a determination letter that classifies it as a

¹ Advance Notice of Proposed Rulemaking (ANPRM), 72 Fed. Reg. 42335 (Aug. 2, 2007)(to be codified at 26 C.F.R. pt. 1). This ANPRM is available from the IRS website at www.irs.gov under Charities and Nonprofits.

functionally integrated Type III supporting organization. Although an organization that receives a determination that it qualifies as a functionally integrated Type III supporting organization based on its agreement to satisfy the ANPRM, it will have to comply with the regulations that define functionally integrated Type III supporting organizations when they are finalized. This option affords an organization with an opportunity to obtain a functionally integrated classification now. An organization that chooses to wait for final guidance that establishes requirements to obtain classification as a functionally integrated Type III supporting organization is, nevertheless, eligible to receive a Type III supporting organization determination without any decision about whether it is or is not functionally integrated. In this situation, Notice 2006-109, 2006-51 I.R.B. 1121, provides rules on which private foundations can rely to ensure they are not making grants to Type III supporting organizations that are not functionally integrated.

Although the PPA of 2006 amended the law with respect to Type III supporting organizations prompting a need to revise the Treasury Regulations, the IRS is not suspending Type III supporting organizations that meet the current regulations because the “but for” and payout requirements contained in §1.509(a)-4(i)(3)(ii) and (iii) of the Income Tax Regulations are still valid. Nevertheless, an organization that receives a determination that it qualifies as a Type III supporting organization will have to comply with new qualification requirements for Type III supporting organizations when final regulations are issued.

This procedure applies to organizations seeking functionally integrated Type III supporting organization status. It is effective immediately and will last until guidance is available.

The content of this memorandum and the attachments will be incorporated into IRM 7.20.7, Exempt Organizations Determination Letter Program, IRC 509(a)(3) Supporting Organizations Guide Sheet.