



Sustaining & Rebuilding Resilient Communities

May 13, 2026





Threats that Nonprofits May Face:

- Regulatory Update
- Overview of Investigations
- Specific threats that we've seen
 - 501(c)(3) Audit
 - Charitable state registration
 - FCA
 - FARA
- Resources
- Democracy Protection Network
- Q&A

Agenda

This Presentation Is Not Legal Advice

Today's discussion provides a high-level overview only and should not be considered direct legal advice. Please consult your in-house attorney and your finance officer about your specific matter.

Legal Disclaimer: The information provided in this presentation does not, and is not intended to, constitute legal advice. All information, content, and materials available from this presentation and associated materials are for general informational purposes only. Information contained in any associated materials or website may not constitute the most up-to-date legal or other information.



Regulatory Updates

- [Legacy Coal Combustion Residuals Disposal rule](#) - Comments due June 12, public hearing on May 28
- Proposal to relax requirements for legacy coal ash disposal sites
 - Proposes to exempt hundreds of coal ash dumps from regulation
 - Allows states and other permitting authorities to make all decisions on groundwater monitoring, closure timing, and closure requirements - leading to a patchwork of protections
 - Would allow companies to leave toxic coal ash at a site even when it may contaminate groundwater
 - Broadens the number of sites eligible for cleanup deferral and delays compliance until review by permitting authority
- Sierra Club & Earthjustice comment template/toolkit [here](#)





You Are Not First. You Are Not Alone.



The federal government has a long and unfortunate history of weaponizing its investigatory powers.

- **1938:** *House Un-American Committee* declared ACLU a Communist front;
- **1953:** *Committee to Investigate Tax-Exempt Foundations* led investigation into “un-American” activities.
- **1950s–1970s:** *FBI’s COINTELPRO* program targeted civil rights organizations, placed MLK under surveillance, and conducted extensive investigations into the NAACP, SNCC, and others.
- **1969–75:** The *House Committee on Internal Security* compiled extensive dossiers on antiwar and minority rights activists.
- **1980’s:** Sen. Helms and Rep. Gingrich investigated National Lawyers Guild and other progressive groups for alleged “pro-communist” support. NLG is still going strong!



Senator Joseph McCarthy during a 1954 hearing as chair of the Committee on Government Operations’ Permanent Subcommittee on Investigations.
credit: *United States Senate Historical Office*

As of 2023, there have been at least 75 investigations of U.S. nonprofits that echo these dark periods in our history – and still, we persist, exist, and thrive!



Most Likely Investigations – What to Know

CONGRESSIONAL

- **Inquiry**

- Precedes subpoena
- Response not technically required
- BUT: non-response may lead to subpoena

- **Subpoena**

- May compel appearance at Congressional hearing
- May compel production of documents
- May be concurrent with OIG or Department of Justice investigation

FEDERAL AGENCY

e.g. EPA Office of Inspector General (OIG)

- **Inquiry**

- **Audit**

- Arranged by recipient of federal funds
- Conducted by independent auditor

- **Investigation**

- Criminal, civil, & administrative investigations
 - E.g., AL AG investigation into SPLC alleging deceptive fundraising practices.
- Allegations of fraud, waste, & abuse
- Subpoenas, interrogations, requests for information, employee interviews



How to Prepare – Keys to Navigating

- **Maintain a comprehensive administrative record**

- Maintain copies of all correspondence to your project officer
- Keep track of everything you are doing to remain in compliance with your terms and conditions, including demonstrating robust financial management and procurement procedures

- **Secure counsel and know your rights**

- If you are faced with an investigative process, get in touch with legal counsel if possible
- Legal counsel can advise you of rights and responsibilities and help secure the best outcome

- **Remain calm**

- Work with counsel to make sure you are providing all materials and evidence you need
- Always tell the truth

- **Utilize resources and stay informed**

- **Don't forget Comms and Cybersecurity – Link CRP**



IRS 501 (c)(3) Audit Procedures

What to Know

- 501(c)(3) status **cannot** be stripped by executive fiat
 - IRC Section 7217 prohibits senior officials in the Executive Branch (**including the President**) from directly targeting any specific tax-exempt entity
- There is a defined process that **must** be followed:
 - Examination
 - Outcome
 - Protest and Appeal (only if negative outcome)
 - Final Determination
 - Length Depends on Examination Type – Field Exams can last a year or more

TAX-EXEMPT STATUS REMAINS IN PLACE DURING THE AUDIT!



IRS 501 (c)(3) Audit Procedures

How To Prepare

- Remain Calm
 - Examinations are private until a final determination letter is issued – unless the entity chooses to publicize the investigation, no-one will know about it
 - Even in the worst case outcome where tax-exempt status is revoked, the entity will remain a nonprofit and will remain fully able to continue operations
 - The IRS has no authority to shut down a nonprofit, seize its assets, or otherwise take control of the entity
 - The only consequence is donors will not get a deduction for donations
- Gather Documents
 - All Forms 990 filed in past 7 years plus supporting documents
- Review and Understand the Audit Process





IRS 501 (c)(3) Audit Procedures

Resources

- [Nonprofits Under Fire: How the IRS can – and Cannot – Revoke Federal Tax Exempt Status](#) – Tenenbaum Law Group PLLC (not affiliated with L4GG)
- [What Is Tax-Exempt Status and How Groups Can Lose It, Explained](#) – Bloomberg Daily Tax Report
- [How to protect your 501\(c\)\(3\) in the face of Challenges](#) – L4GG Guidance Brief





Charitable State Registration

What to Know

- ~40 states require nonprofits to register *before* soliciting donations from residents who live in that state
- Rules vary significantly by state; most require annual renewals and financial statement filings.
- Laws are largely outdated - written before websites & social media
 - largely unknown how each state handles
- Crowdfunding and giving days or email campaigns may trigger multi-state liability

Penalties for Non-Compliance

- Fines and fees
- Cease-and-desist order (stop all fundraising)
- Reputational harm



Resources

<https://www.councilofnonprofits.org/running-nonprofit/fundraising-and-resource-development/charitable-solicitation-registration>



Threats to Charitable State Registration

Website Monitoring

- We are aware of at least one state, Florida, monitoring websites of nonprofits whose registration has lapsed due to clerical error
- We believe state regulators could be monitoring nonprofit websites for compliance violations
- A suspended or lapsed registration and a visible donate button could be enough to trigger liability in certain states

How to Protect Your Organization

- Audit your registration status in applicable states
- Outsource charitable registration to CPA or nonprofit support company if needed



False Claims Act – Connected to Federal Funding

● What to Know

- Originally a whistleblower statute, the gov't is using the FCA to threaten federal grant recipients that operate programs related to diversity, equity, and inclusion (DEI), “gender ideology,” and immigration.
- Grantees are forced to certify that they will comply not only with federal anti-discrimination laws but also Trump executive orders, under threat of FCA enforcement.
- Key to FCA is that you knowingly submit a false claim, and the false claim was material to the gov't payment of funds
- The statute allows for non-government actors to bring cases, which can lead to frivolous complaints from ideologically motivated parties
- You may be able to reserve your rights when certifying

L4GG is here to help!

**Protect
Federal
Funding**





False Claims Act – Connected to Federal Funding

How to Prepare

- Keep calm and reach out – have a plan in place that covers all contingencies – legal and technical experts can help with that
- Document everything! Make sure to keep detailed records and make sure everything is in writing, and saved in a logical spot
- Come to L4GG/EPN for help with federal funding grant conditions

● Resources

- If you have any questions, concerns or need assistance, you may reach out to FPC@L4GG.org or fill out an [FPC intake form](#)
- Overview of the [False Claims Act](#)

**Protect
Federal
Funding**



Certification Strategies to Mitigate Risk

Option 1 - Walk away from the funding

Option 2 - Ask the agency to remove the bad conditions

Option 3 - Challenge the conditions in court (before signing)

Option 4 - Sign grant agreement, but qualify compliance at first draw-down

- You may need to certify when you modify an existing grant or sign a new grant agreement
- Level of risk depends on the specific language in the T&Cs
- We are here to help!
 - Besides FPC resources highlighted on the previous slide, experts at EPN, DPN, NDLN, Climate Ready, Protect Democracy and many more are ready to lend a hand





Foreign Agents Registration Act

- **What to Know**

- FARA requires disclosure when acting **at the request, direction, or control** of a **foreign principal** (including foreign governments, political parties, corporations, individuals, and NGOs).
- According to the DOJ, FARA helps protect the integrity of American democracy by combating covert foreign government influence in our political process.”
- “It defines **agents** as those who **act at the request of** or under the **direction, control, or order** of a foreign principal.”

- **How to Prepare**

- Keep records / proof of your org’s independence
- If you have foreign ties, map them and keep clear records

- **Resources**

<https://www.justice.gov/d9/pages/attachments/2020/09/01/protecting-us-covert-foreign-influence.pdf>





Summary of Best Practices

- Know who to call before you need to call them
 - Develop a phone tree that includes your internal leadership team, relevant board members, and legal counsel.
 - If you do not have an in-house or fractional lawyer, identify who you will call for help - [L4GG](#), [NLDN](#), [DPN](#), [DF](#), [Charity and Security Network](#), [Climate Ready](#)
- Proactive compliance assurance will make everything easier
 - Maintain current and complete organizational records (e.g., bylaws, IRS letters, 990s, document retention policy).
 - Stay compliant with filing requirements, lobbying rules, and nonprofit law.
 - Ensure strong board governance and financial controls.
 - Evaluate opportunities for enhancing operations, governance, and controls.
 - Compliance/legal assistance - [L4GG](#), [EPN](#), [NLDN](#), [DPN](#), [DF](#), [Charity and Security Network](#), [Climate Ready](#)
- Have a proactive communications strategy
 - Storytelling is a powerful tool (once lawyers review it!) - [EPN](#), [Climate Ready](#)



Who does the Democracy Protection Network Serve?

Democracy Defenders

The DPN is purpose-built to serve organizations and leaders that work on issues directly related to protecting and strengthening US democracy, such as:

- ❖ An community-based organization working to counter hate-fueled violence;
- ❖ An advocacy group that holds public officials accountable for abuses of power;
- ❖ A faith-based organization engaged in nonpartisan voter education;
- ❖ An election official carrying out their duties;
- ❖ A mayor who promotes racial justice and facing retribution.

Those Targeted in a Way Intended to Silence and Intimidate

DPN also supports applicants who are not engaged in democracy work, but are subjected to anti-democratic attacks.

- ❖ Advocacy nonprofits threatened with loss of their 501(c)(3) tax exempt status;
- ❖ Public officials or prosecutors who face retribution or were unfairly terminated ;
- ❖ Immigrant justice organizations investigated by Congress with the intent to intimidate;
- ❖ Groups facing DOJ investigations because they criticize government policy or serve marginalized communities.

What Does the Free Support Look Like?

Apply: <https://democracyprotectionnetwork.org/application/>



Legal advice & representation

Expert attorneys defend against politicized investigations, congressional inquiries, lawsuits

From advice to full legal representation

Physical security & threat assessment

Professional security experts provide threat evaluation, safety planning, and protection services

From security cameras to 24h presence

Cybersecurity protection

Digital security specialists assess vulnerabilities, implement protective measures, and respond to hacking attempts or online attacks

Crisis communications

Strategic communications experts give guidance during public targeting, help managing media attention, and protecting reputation



Lots of Places to Get Help

**L4GG Fund
Protection Clinic**



**EPN Technical
Assistance**



**Democracy
Protection
Network**



**Lawyers
Committee on
Civil Rights**



**NY Lawyers for
Public Interest**



**Climate Ready
Program**



FarmSTAND



**Nonprofit Legal
Defense Network**



Path to Safety



**Investigations
Primer**





Any Questions?





**For the most up-to-date
resources & recommendations,
check out our Federal Funding
Updates**

Scan Here





IRS 501 (c)(3) Audit Procedures

Examination

- Formal Review of an entity's structure and operations, including tax returns
- An entity's status can be challenged for any of the following reasons:
 - Failure to meet the Organizational Test
 - 501(c)(3) organizations must use certain objectively defined corporate structures
 - In practice, it is rare for an entity to fail the organizational test
 - Failure to meet the Operational Test
 - Must be operated "exclusively" for one or more exempt purposes – in order to be tax-exempt, an entity's primary activities must further its exempt purposes
 - All other activities must be merely incidental



IRS 501 (c)(3) Audit Procedures

Examination (Continued)

- Additional reasons for challenging an entity's status:
 - Private Inurement
 - Narrow subset of private benefit that is always impermissible in **any** amount
 - When an individual personally benefits from an entity's resources by virtue of their position (e.g. a board member causes a charity to purchase a vehicle and the same board member uses that vehicle for personal use without reimbursing the entity)
 - Impermissible Private Benefit
 - Deals with a wider variety of actions and includes intangible benefits
 - Incidental private benefit (e.g. a private school board member's child attending the school) is allowed, but cannot be "excessive."



IRS 501 (c)(3) Audit Procedures

Examination (Still Continued)

- Additional reasons for challenging an entity's status:
 - Substantial Non-Exempt Purpose
 - Excessive Lobbying
 - Engaging in Prohibited Political Campaign Activity
 - Excessive Unrelated Business Income
- Most Common Audit Types:
 - Correspondence – Done via mail and electronic correspondence without physical visits from IRS agents
 - Field – Much more invasive audit with auditors on site reviewing documents and conducting interviews; generally take several months or more

TAX-EXEMPT STATUS REMAINS IN PLACE DURING THE AUDIT!



IRS 501 (c)(3) Audit Procedures

Outcome

- Outcomes that **DO NOT** revoke or alter an entity's status:
 - No Change Letter
 - No Change Letter with Advisories
 - Negotiated Closing Agreement
- Only one outcome **MAY** result in revocation of an entity's status:
 - Proposed Revocation of Tax-Exempt Status
 - **30-day window to protest** (may be extended, but extension **NOT** guaranteed)
 - Entities may challenge this determination and can prevail in court



IRS 501 (c)(3) Audit Procedures

Appeal Process and Determination Letter

- Initial Appeal to IRS Appeals Office
 - Informal meeting with Appeals Officer **without** the Examining Agent present
 - Appeals Officer may overturn the Examining Agent's proposed revocation and either issue a letter with advisories or negotiate a closing agreement instead
- Challenging a Revocation in Court
 - Even if the Appeals Officer issues a Final Determination Letter revoking an entity's status, the revocation can still be challenged in court
 - Entity must petition court **within 90 days** of the date on which the Final Determination Letter is issued