

CFC MEMORANDUM 2006-22

December 4, 2006

TO: LOCAL FEDERATIONS AND LOCAL INDEPENDENT ORGANIZATIONS

**FROM: MARA T. PATERMASTER
DIRECTOR
OFFICE OF CFC OPERATIONS**

SUBJECT: GUIDANCE ON 2007 CFC ELIGIBILITY REQUIREMENTS AND CHANGES TO THE LOCAL APPLICATIONS

This memorandum provides guidance on changes to the 2007 CFC Application for Local Organizations as a result of the revisions to the CFC regulations that went into effect on November 20, 2006. This document modifies CFC Memoranda, 2004-11 and prior guidance to conform to the current regulations. Part I of this memorandum applies to local independent organizations as well as federation members. (Note: under the new regulations the term "independent" replaced the term "unaffiliated".) Part II includes information on requirements that apply only to local federations.

The following changes are in effect for the 2007 application. Additional information on each item is included in this memorandum.

All local applicants must provide the hours of operation and name of the County and State where its facility is located.

Private foundations and units of government are not eligible to participate in the CFC. OPM will verify each applicant's I.R.S. Code § 501(c)(3) tax-exempt status with the IRS.

An organization that is part of a group exemption or bona-fide chapter or affiliate of a national organization acting as a single corporate entity, must provide a letter from its affiliated national organization with its IRS determination letter.

An organization with revenues of \$250,000 or more must provide a copy of its audited financial statements. An organization with total revenues of at least \$100,000, but less than \$250,000, must be prepared to provide the LFCC with a copy of its audited financial statements upon request of the LFCC but need not submit it with the application. An organization with total revenues of \$100,000 or less is not required to have audited financial statements, but must certify that it has controls in place to ensure funds are properly accounted for.

OPM no longer evaluates whether revenues and expenses in the audited financial statements reconcile with those contained in the IRS Form 990.

Applicants with administrative and fundraising rates that exceed 25% of total revenue are no longer required to submit an explanation and formal plan for reduction of the rate.

Independent organizations and federation members are not required to submit an annual report or information on board of directors meeting dates, locations and directors' terms of office. This requirement is retained for federations.

A federation must reestablish eligibility each year. However, only the applications of its new and former members that were not within the federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status.

Each organization that is deemed eligible to participate in the CFC is entitled to only one listing in the CFC brochure, regardless of the number of federations to which that organization belongs, with the exception that a national organization and its local affiliate may both be listed if the requirements of 5 CFR § 950.401(i) are met. If it comes to the attention of a Local Federal Coordinating Committee (LFCC) that an organization has applied more than once, the LFCC will contact the organization directly to request written confirmation of the one application to be considered. In the absence of a satisfactory response, all of the applications may be denied.

PART I - Requirements for Local Independent Organizations and Federation Members

**1. Statement of Real Services, Benefits, Assistance, or Program Activities
(Attachment A)**

a. Documentation of Local, Adjacent, or Statewide Presence

In accordance with 5 CFR §950.204(b) each organization seeking eligibility on the local part of the Charity List must demonstrate to the satisfaction of the LFCC of the appropriate local campaign that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent

local campaign, or a substantial statewide presence. Applicants are also required to certify (Item 4) that services, benefits, assistance, or program activities affecting human health and welfare were provided in the previous calendar year. Such documentation must appear in Attachment A of the application. Failure to list any real human health and welfare services in the year prior to the application will result in a denial of the application.

“De minimis” services or benefits will not be accepted as a basis for qualification as a statewide organization. OPM, in its sole discretion, will determine whether services, benefits, assistance, or program activities are “de minimis” based on whether, under the facts and circumstances presented, they fail to constitute more than a minimal level, type or amount.

Factors that OPM will consider in determining whether an organization's services, benefits, assistance, or program activities are de minimis include, but are not limited to:

- nature and extent of the service, benefit, assistance, or activity;
 - frequency, continuity, and duration;
 - impact on, or benefit to, beneficiaries;
 - number of beneficiaries.

Participating organizations are required to certify (Item 4) that services, benefits, assistance, or program activities affecting human health and welfare were provided in the previous calendar year. Such services must appear in **Attachment A** of the application. Failure to list any that affect human health and welfare for the year prior to the application year will result in a denial of the application.

b. Hours of Operation

Local applicants are required to provide the hours of operation (minimum 15 hours per week) and the County and State where the applicant's office is located. Organizations must also certify that they meet the criteria for substantial local presence, substantial local presence in an adjacent campaign area, or substantial statewide presence.

It is also the responsibility of the applicant, whether it is an independent organization or a federation, to clearly and accurately label evidence of local eligibility. For example, it is not acceptable to submit an application marked “Local Presence” for an organization that is actually applying as having local presence in an adjacent campaign, or that is applying for local presence claiming statewide services and benefits.

c. Substantial Local Presence

CFC regulation 5 CFR § 950.204(b)(1)(i) defines substantial local presence as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. It is the responsibility of the applicant, whether it is an independent organization or a federation, to provide a physical street address, hours of operation, and the organization's dedicated phone number

d. Substantial Presence in an Adjacent Campaign

An applicant demonstrating eligibility as a local organization in an adjacent campaign area under 5 CFR § 950.204(b)(1)(ii) must include information documenting its substantial local presence in the adjacent campaign area. This includes a physical street address, hours of operation and a local dedicated phone number. *The acceptance of an organization in a local campaign does not automatically qualify it for listing in all adjacent campaigns. The organization must submit complete applications to all adjacent campaigns, including documentation of its substantial local presence in the adjacent campaign area.*

e. Substantial Statewide Presence

CFC regulation 5 CFR § 950.204(b)(1)(iii) requires an organization certifying statewide presence to demonstrate that it provided or conducted real services, benefits, assistance, or program activities covering 30% of a state's geographic boundaries or affecting 30% of the targeted population in the state. Common errors in Attachment A include lack of description of the actual services, failure to define the target population, failure to show the geographic area where actual services have been provided or failure to fully demonstrate that the population served or the geographic area equals 30% or more of the target population or geographic area. Total population statistics by county or claims that services are available to individuals in these counties are generally not adequate evidence of service.

In the case of the 30% geographic area test, applicant organizations must provide service records or other evidence (i.e. visitor statistics, client or membership statistics, project results or clearly outlined maps) that clearly show what portion of the geographic area has been covered relative to the total state geographic area.

In the case of the 30% population test, if an organization services special populations (i.e. persons with HIV or AIDS, adults requiring literacy instruction, non-English speaking children, etc.) the organization should provide evidence that it affects 30% of the eligible or target population. This can be shown by providing an estimate (through population surveys, needs assessment studies, etc.) of the total target population eligible to receive the services together with a demonstration that its services affect 30% of that target population. It is helpful if the applicant demonstrates that it has met the 30% rule by providing a calculation along with its Attachment A, such as:

Population Served = 30,000 people	or	Counties Served = 30
Target Population = 100,000 people		Total Counties in State = 100
Percentage of Counties Served = 30%		Percentage of Target Population Served = 30%

Whichever eligibility criteria the applicant organization chooses, the burden of proving the criteria is on the applicant organization

2. IRS Determination Letter (Attachment B)

a. 501(c)(3) Status

Every CFC applicant must demonstrate that it is recognized by the Internal Revenue Service (IRS) as tax-exempt under 26 U.S.C. § 501(c)(3) to which contributions are tax-deductible pursuant to 26 U.S.C. § 170(c)(2) and that the organization is classified as a public charity under 26 U.S.C. § 509(a). Private foundations and units of government are not eligible to participate in the CFC

b. IRS Verification

Each applicant's 501(c)(3) status will be verified with the IRS. Applicants whose current 501(c)(3) status cannot be confirmed by the IRS will be denied participation. OPM encourages organizations to request current letters from the IRS confirming their tax-exempt status. This request can be made by contacting the IRS at (877) 829-5500.

Local organizations that are part of an IRS group exemption must provide a copy of the IRS letter granting the group exemption, as well as the list of subordinates that are covered by the group exemption. The EIN on the applicant's Form 990 must match the EIN on the IRS determination letter.

Bona-fide chapters or affiliates of a national organization that do not have an IRS determination letter for the local organization must provide a certification signed by either the Chief Executive Officer (CEO) or CEO equivalent of the national organization. Such certification must state that the local charitable organization operates as a bona-fide chapter or affiliate in good standing of the national organization and is covered by the national organization's 501(c)(3) tax-exemption, IRS Form 990 and audited financial statements, to the extent required by regulation. A copy of the national organization's 501(c)(3) letter must accompany the CEO's certification.

3. Audited Financial Statements (Attachment C)

a. Reporting Requirements

Each local organization with total revenue of \$100,000 or more is required to certify that it accounts for its funds in accordance with generally accepted accounting principles (GAAP) and has an audit of its fiscal operations completed annually by an independent certified public accountant in accordance with generally accepted auditing standards (GAAS). The CFC no longer requires that the audited financial statements reconcile with the IRS Form 990 (although this is still an IRS Form 990 requirement).

Local organizations with total revenue of \$100,000 or more seeking eligibility are required to account for their funds in accordance with Generally Accepted Accounting Principles (GAAP), which requires an accrual based accounting system. Both the IRS Form 990 and the audited financial statements must be prepared for the same fiscal period, using the accrual method

of accounting. CFC eligibility will be denied for organizations using any method of accounting other than the accrual basis, including the cash basis, modified cash basis, and modified accrual basis of accounting.

b. Revenues Over \$250,000

Organizations with \$250,000 or more must provide a copy of the audited financial statements with the application. The audited financial statements and IRS Form 990 must cover the same fiscal period that ended not more than 18 months prior to January 2007 (i.e. ending on or after June 30, 2005).

c. Revenues Between \$100,000 and \$250,000

Organizations with total revenues of at least \$100,000 but less than \$250,000 are not required to submit copies of the audited financial statements with the application. However, the LFCC and OPM reserve the right to request a copy of the audited financial statements. Failure to respond to such a request within ten business day will result in the denial of the application

d. Revenues Under \$100,000

Organizations with total revenue of \$100,000 or less must certify that the organization has controls in place to insure funds are properly accounted for and that it can provide accurate timely financial information to interested parties. It is not required to submit documentation of the controls with the CFC application. However, the information must be provided to the LFCC or OPM upon request. Failure to respond to such a request within ten business day will result in the denial of the application.

e. Single Corporation Affiliates

Local affiliates of a national organization that act as a single corporation can be determined locally eligible using the national organization's IRS determination letter, IRS Form 990 and audited financial statements. The affiliate must provide a pro forma IRS Form 990, page 1 and Part V only.

4. IRS Form 990 (Attachment D)

- a. A local applicant must certify, as appropriate, that it has included a copy of the IRS Form 990 that was submitted to the IRS; or, that it is not required by the IRS to file a Form 990 but has completed a pro forma copy for CFC purposes only.

An organization that is required to submit an IRS Form 990 on an annual basis is not permitted to submit a pro forma document with its application. An organization that files with the IRS must submit with its application a complete IRS Form 990, including all supplemental statements and Schedule A, if applicable, to be eligible for the CFC regardless of whether or not the IRS requires the organization to file the Form 990. IRS Forms 990EZ, 990PF, and comparable forms will not be accepted. However, smaller organizations that file Form 990EZ may submit it with page 1 and Part V of the Form 990 attached.

b. Officer, Director, Trustee and Key Employee Compensation Must be Set Forth in IRS Form 990

Part V of the IRS Form 990 requires the organization to include a "List of officers, directors, trustees, and key employees (List each one even if not compensated)." An organization's IRS Form 990 that does not include a list of the officers, Board of Directors, trustees and key employees, and their compensation, if any, is incomplete and will result in a denial. If an officer, director, trustee, or key employee is not compensated, the compensation column must reflect \$0.

5. Administrative and Fundraising Rate (AFR)

OPM no longer requires an explanation and formal plan to reduce administrative and fundraising expenses if an organization's AFR exceeds 25 percent. Applicants are still required to calculate and provide their AFR. If the organization is admitted, its AFR will appear next to the organization's listing.

PART II - Requirements for Local Federations

Local federations must adhere to the guidance provided above, in Part I, with the following **>exceptions** and additions. This section does not pertain to independent organizations or federation members.

A new federation (one that did not participate in the prior campaign year) must submit, along with its own application, complete applications for all of its member organizations, including each organization's administrative and fundraising rate.

A federation that participated in the prior year must submit a complete application for itself as well as each member that is new to the federation. A federation member is considered to be new even if it participated in the prior year as an independent organization or as a member of another

federation, or was denied participation as a member of the applicant federation in the prior year. A federation must submit the complete application of any continuing member organization upon the LFCC's request.

**6. Statement of Real Services, Benefits, Assistance, or Program Activities
(Attachment A)**

- a. Federations must provide as their Attachment A, a list of all eligible member organizations, including their legal names, EINs, administrative and fundraising rates, and the local presence category under which each member is eligible for participation in the local campaign (e.g. Local, Adjacent, or Statewide). Each federation must have at least 15 member organizations that meet the eligibility criteria in addition to the federation itself. When a federation applicant has less than 15 eligible members, the federation and/or any of its applicant members that meet local eligibility will be considered as independent organizations and the federation will also be considered as an independent organization which must meet local eligibility criteria. If admitted, all funds and campaign communications will be sent, as appropriate, directly to the participating independent organization.

7. Attachment C - Audited Financial Statements

Federations are required to submit audited financial statements, regardless of the amount of total revenues. OPM no longer requires that the audited financial statements reconcile with the IRS Form 990 (although the IRS Form 990 does contain an internal reconciliation against audited financial statements at Part IV-A & B).

8. Annual Report (Attachment F)

- a. Annual reports or their substitutes (as defined in CFC regulations) must include a description of the organization's services or activities during the year covered by the report and identify the Board of Directors and chief administrative personnel. The CFC will not accept annual reports that contain only a description of mission and goals or historical information about services and activities without a defined timeframe. The annual report requirement does not apply to federation members or independent organizations.

b. Disclosure of Federation Dues/Fees in Annual Report

Each Federation is required to include in its annual report a statement that sets forth details regarding member dues and/or service fee arrangements with its member organizations. The annual report must be made available to the public.

Dues or fees refers to any charge, direct or indirect, that may be deducted or billed for pledge processing or other services related to workplace fundraising. Federal donors should understand how much of their actual CFC contribution reaches charities. If fees are not deducted, but instead are billed, federations must state this.

The role of federations in workplace fundraising is to provide charities with wider access to employee contributions and to provide marketing and other services, at a cost to charities. While these transactions are part of an agreement between the charity and the federation, Federal employees must be provided complete information regarding the actual percentage of their contribution that goes to the charitable organizations they designate.