

NLA Primer For Multi-Entity Nonprofits

Resource & Cost Sharing Agreements

INTRODUCTION

Building and exerting political power in the U.S. requires multiple strategies: organizing, public education, influencing corporate behavior, voter engagement, lobbying and ballot measure advocacy, influencing elections, and much more. To engage in the full range of strategies and tactics that build power, activists must use a mix of legal entities to execute their advocacy strategies - often 501(c)(3)s, 501(c)(4)s, corporate entities, and/or political action committees. When nonprofits use a family of organizations to execute their work, we refer to them as “multi-entity organizations.”

Multi-entity organizations often determine that sharing resources is in their mutual best interests. This is often called “cost sharing” or “resource sharing” or sometimes “resource separation.” Resource sharing is often memorialized in some kind of written agreement (often called a Resource Sharing Agreement (RSA) or Cost Sharing or Cost Separation Agreement). These Agreements set forth the terms by which nonprofits share staff, office equipment and/or space to minimize duplicative expenses and compensate each other for those resources in compliance with applicable laws and regulations.

As explained by The Connection, the go-to guide for multi-entity work from the amazing Bolder Advocacy, nonprofits cost/resources sharing agreements, allow organizations to share: “to carry out their complementary purposes in an economical and efficient manner, including the sharing of employees whose skills and knowledge will assist both organizations and the sharing of office space and equipment....” [The Connection](#), Appendix B.

Resource sharing is governed by a patchwork of rules that boards and nonprofit staff must learn to understand. This primer is designed to help facilitate learning and conversation about how multi-entity resource sharing works in practice - and to help Board members and staff have informed and thoughtful discussions about how they can build a family of organizations that can do bold work safely.

KEY TIPS AND CONSIDERATIONS

What is a cost or resource or cost sharing agreement?

A resource-sharing agreement (RSA) - also referred to as a cost-allocation or cost-sharing or cost separation agreement - is a contract between affiliated nonprofits. The Agreement sets out the terms, conditions, and costs for sharing employees, office space and equipment, intellectual property, and other resources that are used by both organizations. In short, it sets the terms for how affiliated entities will legally share and separate out resources and pay for them.

- **TIP:** Reading and understanding your RSA agreement is critical and not always easy! Your Board, your operations/finance team (especially your bookkeeper and/or accountants) and your leadership must understand what the agreements says so that your organizations can build the systems and practices to operationalize the agreement (e.g. calculate and make payments in a timely manner as outlines in the RSA). Ask your attorney to write your RSA in plain English if possible and to explain it to you - be bold in pushing for the explanation you need - there are no silly questions.

What is the purpose of these agreements?

The purpose of having the Agreement is threefold: (1) to clarify in writing what resources will be shared, and how (i.e. the terms) between all of your legal entities (c3/c4,PAC etc); (2) to ensure those terms are in compliance with the law (usually an attorney helps to draft and review these agreements); and (3) to provide a written roadmap that provides both staff and Boards with clear understanding of how different resources are shared so they can build the systems and processes to follow the agreements set forth in writing.

- **TIP:** Consider creating a terms or activity cover sheet to your RSA. In plain English the sheet should explain what activities need to take place when (i.e. every month X,Y and Z) happens. This makes the complex legal document more accessible and helps create accessible institutional knowledge that will make staff transitions in key operational positions easier

Why do we need agreements to share resources?

The IRS has rules that govern how money in nonprofits can be spent and how it can move between entities. 501(c)(3)s can never engage in partisan political activity and can only engage in limited lobbying - but 501(c)(4)s can engage in political activity (so long as partisan political activity is not their primary purpose) and can engage in unlimited lobbying. The IRS rules say that a (c)(3) may never subsidize the political activity of a (c)(4). So RSAs are often created to allow the (c)(3) to provide services to the (c)(4) while ensuring that the (c)(3) is not subsidizing the work and operations of the (c)(4). A well crafted cost or resource sharing agreement should clearly spell out how the organization will ensure the (c)(3) is not subsidizing political activity in violation of IRS regulations. If you have a PAC you may need an RSA between a (c)(4) and a PAC as well if your (c)(4) staff is spending time working on the PAC.

- **TIP:** It is good practice for all multi-entity organizations who share costs or resources to have a written agreement reviewed by a lawyer in place whenever they share or transfer resources between legal entities.

What kind of entities use these agreements?

The most common agreements are created between a 501(c)(3) and 501(c)(4) - entities that often share staff who do work for both organizations. But you can have an RSA between any two entities (so long as it complies with the law). And many organizations have RSAs in place not only between 501(c)(3) and 501(c)(4), but between their 501(c)(4) and a political activity committee.

- **TIP:** If you have a 501(c)(3) and 501(c)(4) and a PAC it is possible to create a resources sharing agreement that allows you to share staff across the family of legal entities. However, it usually requires two RSA and it is critical to work with an attorney to ensure everything is set up properly. We recommend you work with both a nonprofit (tax) attorney and political/ campaign finance attorney if a PAC or c 4 political activity is involved.

What is an “operating entity”?

Often nonprofits have established 501(c)(3)s and then decide to open a (c)(4). The (c)(3) often holds the infrastructure of the nonprofit - including the systems, staff, and operational know-how such as accounting, billing, data management systems, HR, payrolls and most of the staff. Through an RSA the (c)(3) is agreeing to provide operational services to the (c)(4) for the cost of those services. The terms make clear how the (c)(4) promptly reimburses the (c)(3) for those services. The entity that provides the services is sometimes referred to as the “operating entity” for the family of organizations. Some organizations, especially those that have a family of organizations, some of which engage in political activity, shift their “operating entity” to their (c)(4), which limits liability to the (c)(3).

What are the benefits of resource sharing?

Running a nonprofit is hard! It is expensive and a great deal of work to build out all the operational capacities, knowledge, and systems required to run a nonprofit. When a (c)(3) decides to open a separate but affiliated (c)(4), it is usually a strategic decision that allows the family to expand the strategies and tactics that they can engage in to achieve their mission. However, the (c)(4) often has limited resources (money and staff) and can't afford to set up the operational infrastructure and staff required to run on its own. RSAs thus allow resources to stretch further and avoid duplication of operational infrastructure across affiliated legal entities. RSAs thus allow a (c)(4) to do strategic mission-related work without having to stand up an entire new nonprofit infrastructure. Many (c)(4)s likely would not exist at all if not for RSAs.

What should be included in the agreement?

Frequently included categories are: personnel; equipment and facilities (i.e. rent); indirect costs; and trademarks. Often the agreements also address websites and intellectual property, clarify how

the groups use residues to fundraising and addresses how the organizations share data/list. You do not need your agreement to cover every possible thing you might share - sometimes broad simple categories are best to start. You should review your agreement every year to decide if it needs to be updated.

How do we create an agreement that meets our needs? Key Question to Ask

There is no “one size fits all” agreement. Each family or organization needs to craft agreements that address its particular circumstances. Staff should work with their lawyer and their finance and legal compliance teams to develop a workable agreement. Key questions your team may wish to consider when drafting include:

1. What resources will be shared between the entities?
2. Which entity currently “owns” or controls the resources, including employees/payroll, trademarks, and equipment and/or office space/leases ?
3. Do we have data or lists that need to be shared? Do we want to address that in the RSA?
4. Does our financial and operations team have the capacity to operationalize and stay in compliance with the RSA? If not, what investments or education must take place first?
5. How many transactions will take place? What level of support does the other entity need?
6. How will we share staff? Which staff? Will all staff be shared or only a few? At what percentages? Will those percentages stay steady? Will the percentages change in election years vs non election years? Do you have c3 supervisors of c4 staff? If so, are they shared under the RSA?
7. How will your programmatic/administrative staff track their time? What new systems (like timekeeping) might we have to build? How will we train and acculturate staff to these new systems and processes?
8. How and when will you review and make adjustments to your RSA? Do we want to do it monthly, quarterly? Do we want to have the c4 make a payment to the c3 in advance to avoid any concern that the c3 is subsidizing the c4?

What are common challenges of resource sharing?

- **Website and Branding Confusion:** There is the risk of affiliated c3 and c4s being seen as one entity—a c3. There is also the risk that the boards and staff don’t think of the c3 and c4 as two legal entities with a cost sharing agreement, but think of them as one entity.
- **Building the Infrastructure & Practices to Comply with the RSA:** While there are definitely efficiencies and cost savings from sharing resources, the staff need to develop systems to accurately track expenses, revenue, staff time and allocate them to the right accounts. It’s easy to get sloppy, so good and constant staff training (that includes the “why this matters”) is critical, as is having someone responsible for overseeing regular and timely compliance with this agreement.
- **Expanded Operational Budget & Legal Expertise:** You need to work with an attorney (nonprofit and/or political activity attorney) who understands these agreements. Insist that your attorney make the agreement as simple as possible and make sure you

understand the terms. If your attorney only speaks legalese at you, time to get a new attorney!

- ***Budgeting & Financial Forecasting:*** Understanding how money must move between your entities in compliance with your RSA is just one part of multi-entity budgeting. Every year you will need to plan ahead to determine the right mix of resources you need to do your work in compliance with the law. Remember that in non-federal election years, the percentages you allocate between your c3 and c4 may change - which can impact your budget. Your fundraising may also dictate that you change your allocations yearly or at a certain point in the year. Remember that the ability to move resources back and forth between your legal entities is a critical strategy and help you and your organization survive the booms and busts of multi-entity funding. Be strategic in partnership with your finance team!
- ***Board Education & Management:*** Most board members may not understand how resource sharing works. Executive Directors often need to take time to educate through the board so they can understand the budget (i.e. it is hard to understand how your finances work with a certain percentage of costs that are paid for by another entity). It is important to take the time to work with your finance team to educate your board so they can meet their fiduciary requirements to ensure the financial health of the entity.

What additional knowledge or capacities do our organizations need to have in place to operationalize the agreement?

A good cost sharing agreement is the heart of operating a multi-entity organization in compliance with the law. But the agreement must not just be written well, it must function properly and this requires additional operational capacities, access to expertise, and a commitment to creating a culture of compliance. Nonprofits looking to utilize RSA should consider the following:

- ***Financial Investment in Operations Infrastructure:*** This means it is critical to set up good, workable systems, such as charts of accounts, timesheets, and formulas for determining how to allocate indirect costs, regular payment schedules, etc.
- ***The Right Legal and Accounting Expertise:*** To get the initial systems set up right, it often involves the organizations' lawyers, accountants, and other compliance consultants in addition to the operations team and the ED(s). It is critical to assess if your outside vendors have the knowledge and experience to execute multi-entity work and resources sharing. It is not uncommon for nonprofits to need new attorneys, accountants and bookkeepers when they become multi-entity. Be clear-eyed about building a team with the right expertise; you will rest much easier if you have a multi-entity competent legal and finance team.
- ***Commitment to Education & Training of Staff & Board:*** Staff and board members will need varying degrees of knowledge, but regular training is important. All staff and trustees should understand at least the very basics that two organizations are involved, and the ED and lead operations staff and likely the Treasurer of each Board and the Board Chairs should understand the limitations of each entity, what work is being done by (and

paid for by) which entity and whether the organization is in compliance with the law and the RSA. All staff must know how to track their time.

- ***A Designated Point Person With Responsibility for Compliance with the RSA:*** At a minimum at least one person internally must understand the systems and how to use them and be designed as the point person responsible for implementing the RSA and ensuring compliance with its terms.
- ***Ability to Adapt the RSA to Constantly Changing Environments:*** In the boom and bust of multi-entity funding RSAs can be a critical tool in managing your money to achieve financial stability. Many organizations change their allocation between entities in election vs non-election years.
 - ***TIP:*** Compliance starts at the top. The executive leadership of organizations must lead and demonstrate a commitment to building the operational capacity to make a resource sharing agreement work. If leadership does not prioritize compliance, or does not allocate a budget for access to needed legal or accounting advice, or does not ensure that other departments comply with the operation's team requests and are acting in compliance with the agreement, RSAs will not work. RSA's require an organizational culture that values compliance. And therefore leadership holds ultimate responsibility for ensuring that it is clear to all staff that the organization has a culture of compliance.

TOP 10 PRACTICAL TIPS FOR COMPLIANT RESOURCE SHARING

- **ONE: Review your RSAs Yearly:** Review your RSA every year to remind key staff what it says and to update it if circumstances have changed. This is especially important if your work changes substantially between election and non-election years - as adjustments are often required.
- **TWO: Resource Sharing is Change Management- Talk About Passion, Impact and Power - Not Just Timekeeping:** Operations staff often dislikes the work of resource sharing; field and program staff often dislikes having to track time. It is critical that leadership build a culture of compliance in an organization by helping staff to understand that compliance is part of power building. Lead with the critical work you do by being multi-entity - not with a set of rules explained by an attorney. Ground your explanation of multi-entity compliance in your theory of how critical multi-entity work is to your mission and goals.
- **THREE: Leadership Must Create a Culture of Compliance:** EDs must lead the charge for a culture of compliance (see above). It is critical that the operations team have the full and public support of the ED for compliance work.
- **FOUR: Invest in Regular Training:** To be compliant your organization needs to have regular training for staff appropriate for their roles. All staff need training on timekeeping and a basic understanding of lobbying, political activity, and multi-entity work. Finance staff need training on resource sharing. Comms staff needs training on compliance rules and the ability to identify lobbying and political activity. Develop an in-house compliance training program and ensure compliance with your resource sharing agreement is part of the program.
- **FIVE Don't Skimp On Your Operations Infrastructure:** Too many nonprofits prioritize programs over the operations that make programs possible. Too many EDs do not invest in their operations team or pay for sufficient support from outside experts like attorneys and accountants until they have a fine, violation, lawsuit or investigation. It is critical that EDs allocate sufficient staff and budget to operational work and empower operations/finance and compliance staff to do their job well.

- ***SIX Educate for Wide Adoption:*** Share your with your finance team, your lawyer(s), and other relevant senior staff. Give it to applicable new staff. Everyone who is responsible for implementing the agreement must understand the terms.
 - ***SEVEN Build The Right Team with the Right Expertise:*** Get a team of financial, legal and compliance folks that understand multi-entity work and resource sharing. We strongly recommend you review your agreement with an attorney who understands the laws of your state and federal laws that govern nonprofits. When hiring an attorney, ask direct questions about their experience with resource sharing and campaign finance, tax and nonprofit laws that intersect with resource sharing.
 - ***EIGHT Consider the Agreement When Circumstances Change:*** Refer to the agreement when engaging in new activities or when your budget or financial situation changes. The agreement allows you to move sources around to respond to changed circumstances.
 - ***NINE: Assess your Risk Tolerance & Build What Works for Your Family of Entities:*** There are many different ways to share resources - and some of the choices you will need to make are not necessarily clear under the law, but are more a reflection of your risk tolerance and level of caution. Many organizations make payments on agreements monthly or quarterly. Some of the more cautions pay in advance to avoid any perspective the c3 is subitizing the c4. The decision of how you share resources is a reflection of your values, your risk tolerance, your capacity as an organization and the advice you get from your staff and legal and financial teams. Many of the rules are not crystal clear - but rather provide vague guidance. Be intentional about developing a plan that works for you and your organization.
 - ***TEN: WHAT WOULD YOU SAY [FILL IN]***
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Additional Resources to Learn More:

- [Affiliated Organizations: Sharing Resources – Nonprofit Law Blog](#)
- [Working Together: Affiliation and Coalition Basics — Bolder Advocacy](#) (Podcast)
- [The Connection — Bolder Advocacy](#)
- [Sample Contest Form for Board Approval of an RSA](#)