



Connecting lawyers, nonprofits, and communities

Life Cycle Moment: The End of the Advance Ruling Period

Lawyers Alliance is pleased to present this Life Cycle Moment as part of a series of educational pieces directed towards nonprofits serving immigrants. Emerging organizations serving immigrants often start as volunteer-managed and operated entities, with the roles of board and staff blurred. Emphasis is rightly placed on program development. As they evolve, these organizations are expected to develop more complex organizational processes and demonstrate their maturity, by incorporating and seeking federal tax exemption, board development and governance, undertaking fundraising efforts, hiring staff, securing space, and entering into collaborative relationships with other nonprofits. At each stage in the life cycle of organizational development, immigrant-serving organizations face new challenges and milestones that must be reached in order for them to grow successfully. This Life Cycle Moment, "The End of the Advance Ruling Period," should be helpful for organizations that are newly formed, as well as for those that have been in existence up to five or more years.

Lawyers Alliance's Immigrant Communities Initiative makes it a priority to provide business and transactional legal services to nonprofits serving immigrants. We assist dozens of immigrant-serving groups every year with the issues that arise at different moments in the life cycle of an organization's development. Please watch for additional Life Cycle Moments throughout the year.

Life Cycle Moment: The End of the Advance Ruling Period

Organizations recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (the "Code") often receive temporary classification, or an "advance ruling," as a **public charity** for a period of 3 to 5 years. If your nonprofit's advance ruling period expired, it must submit a completed Form 8734 (the "Form") to the Internal Revenue Service ("IRS") within 90 days of the expiration of the period. The Form will be mailed to you, but if you do not receive it, you should download it from the IRS website.

If a nonprofit fails to complete the Form properly or to satisfy the IRS that it is a public charity, it will be reclassified as a **private foundation** retroactive to its date of incorporation.

Frequently Asked Questions

What is a public charity?

There are many types of public charities, but the most common type has an active program of fundraising and receiving contributions from many sources, including the general public, governmental agencies, corporations, private foundations or other public charities. In contrast, private foundations typically have a single major source of funding (from one family or corporation) and most have as their primary activity the making of grants rather than the direct operation of charitable programs.

Why is public charity status important?

Public charity status enables organizations to obtain funding more easily from foundations, and typically enhances fundraising from individual, corporate and government sources as well.

Public charities are not subject to the following requirements, which apply to private foundations: (i) more onerous regulations, (ii) excise tax on net investment income, (iii) annual income distributions, and (iv) Form 990-PF (more demanding than Form 990).

How can my nonprofit demonstrate that it is a public charity?

Your nonprofit must normally receive more than a 1/3 of its support from the government and general public, which includes a broad range of foundations, corporations and/or individuals.

This is calculated by averaging revenues over a 5-year period. If your nonprofit normally receives less than 1/3 of its support from such public sources, it may still qualify as a public charity if more than 1/10 of its revenues are from the government and general public and certain facts and circumstances exist. For example, it has a record of soliciting funds from the public in good faith, it regularly carries on charitable services that benefit members of the general public and its board is comprised of members from the general public.

What should my nonprofit do at the end of the advance ruling period?

At the end of the advance ruling period, your nonprofit must submit the Form 8734 demonstrating that it meets the public support test for a public charity. The Form 8734 will document the organization's actual financial performance between the effective date of the determination letter and the submission of the Form. If your organization is still in its advance ruling period note the date the period expires.

What if my nonprofit has been reclassified as a private foundation?

You should first check whether the appeals period on the reclassification has expired. The appeals period has not expired, you should review your completed Form 8734 for accuracy. If you completed the Form incorrectly, you should amend it. If the appeals period has expired, your options are more limited. You can request to amend the Form, if appropriate, but the IRS might not grant your request. The next solution is to request to terminate your nonprofit's private foundation status pursuant to Code Section 507(b)(1)(B). A nonprofit that terminates its private foundation status is treated, beginning with its next fiscal year, like a public charity for purposes of receiving grants and donations for a 60-month review period, but is still required to file the Form 990-PF (rather than the simpler Form 990).

This alert is meant to provide general information only, not legal advice. The Lawyers Alliance website (www.lawyersalliance.org) contains further information and details. Form 8734 and the Instructions for Form 8734 are at the Internal Revenue Service (IRS) website at www.irs.gov. Exempt organizations can also contact the IRS at (877) 829-5500. Please contact Program Associate for Client Relations Angela Cheng, at (212) 219-1800, ext. 278 if you have questions about the advance ruling period or IRS Form 8734, if your nonprofit has been reclassified as a private foundation, or if your nonprofit needs legal assistance.