

TO: Fraternity and Sorority Leadership

FROM: Dianne Chipps Bailey
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RE: Collegiate Housing and Infrastructure Act – Compliance Checklists

Under the Internal Revenue Code as it exists today, fraternity and sorority foundations classified as a 501(c)(3) organization may accept tax deductible contributions to make grants to fraternity and sorority housing corporations *only* if the grant is used solely for educational purposes. Accordingly, at this time tax-deductible contributions may be accepted only for libraries, internet and computer wiring, scholarships, leadership initiatives and programs, study facilities, and other uses directly related to the education of fraternity and sorority members. In contrast, universities and colleges are permitted to use tax-deductible charitable contributions for the construction and renovation of student housing that include non-educational spaces such as residential, dining, laundry and fitness.

The Collegiate Housing and Infrastructure Act (“CHIA”), which has been introduced again this Congress, seeks to revise the Internal Revenue Code to allow fraternity and sorority foundations to make grants to fraternity and sorority housing corporations for residential facilities similar to their on-campus counterparts without jeopardizing the foundation’s 501(c)(3) status.

Overview of CHIA

CHIA states that a 501(c)(3) organization “shall not fail to be treated as organized and operated exclusively for charitable or educational purposes solely because such organization makes collegiate housing and infrastructure grants to an organization described in subsection (c)(7) which applies the grant to its collegiate housing property.” The grants may be used to provide, improve, operate, or maintain collegiate housing property. Such uses may involve “more than incidental social, recreational, or private purposes so long as such grants are for purposes that would be permissible for a dormitory or other residential facility of the college or university with which the collegiate housing property is associated.” Grants may not be used to provide physical fitness facilities. In order to qualify as a collegiate housing property, substantially all of the residents must be full-time students at the college or university. Grants made to 501(c)(2) organizations that hold title to the property exclusively for the benefit of a 501(c)(7) organization are treated the same as if the grant were made directly to the 501(c)(7) organization.

Limitations of CHIA

CHIA allows fraternity and sorority foundations to make grants to housing corporations to construct, improve, operate, and maintain fraternity or sorority housing property. It is important to note that the proposed legislation does not make the collegiate housing and infrastructure grant itself a

charitable exempt activity. Instead, an already qualified charitable organization will not be disqualified from 501(c)(3) status because of such grants. This distinction is important because it prohibits setting up a new charitable entity solely for the purposes of making collegiate housing and infrastructure grants. The grant making entity must otherwise be organized and operated for an exempt purpose and qualify as a 501(c)(3) organization.

The scope of the permitted use of grants qualifying under CHIA remains somewhat unclear. The grants may be used “for purposes that would be *permissible* for a dormitory or other residential facility of the college or university with which the collegiate housing property is associated.” A conservative reading of this statement would limit the use of grant funds to those facilities and activities which dormitories and other residential facilities at the college or university *currently* provide. The term *permissible*, however, suggests a slightly broader scope, but, it is unclear what, and according to whom, would qualify as “permissible.” Accordingly, we recommend that foundations require a signed affidavit from the college or university with which the college housing property is associated stating that the proposed use of the CHIA grant is for purposes that would be permissible for a dormitory or other residential facility of such college or university.

Preparing for CHIA

Now is the time to assess the institutional readiness of your fraternity or sorority’s national affiliate foundation, national housing corporation, and local housing corporations and make any necessary adjustments in anticipation of and in preparation for CHIA’s possible enactment. To assist you with this preparation, we have provided the attached checklists of actions items to ensure that you are prepared when CHIA becomes law. There are three separate checklists: one for your national foundation, another for the national housing corporation, and a third for the local housing corporations receiving CHIA grants. Note that we have not prepared a checklist for local foundations because CHIA creates material disincentives with respect to using local foundations to fund housing and infrastructure grants.

Should you have any questions about the CHIA legislation or how to prepare your organization for its enactment, please do not hesitate to call us. Dianne Chipps Bailey may be reached at (704) 377-8323 or [dbailey@rbh.com](mailto:d Bailey@rbh.com). Luke Foster may be reached at (704) 377-8125 or lfoster@rbh.com.

Best regards.



This memorandum and checklists were prepared in collaboration with Cindy Stellhorn, MJ Insurance, and many others within the Greek letter community. The authors are particularly grateful for Ms. Stellhorn’s keen insights gained from her many years of experience and leadership in our sector.

[checklists begin on the following page]

Collegiate Housing and Infrastructure Act ~ Compliance Checklist for National Foundation

What to Do	Contact	Timing	Comments/Notes
1. State Good Standing <ul style="list-style-type: none"> Confirm your organization is in good standing with the state of incorporation, has paid all applicable fees, and made all applicable filings. 	Sec. of State (“SoS”)	Prior to receiving donations or making grants.	
2. IRS Determination Letter <ul style="list-style-type: none"> Locate a copy of your organization’s IRS determination letter. Obtaining a duplicate copy or new determination letter, if you do not already have one, can take up to 6 months. 	IRS	Prior to receiving donations or making grants.	
3. Form 1023 <ul style="list-style-type: none"> Locate a copy of your organization’s Form 1023 Application for Recognition of Exemption. Review for consistency with current operations. 	IRS	Prior to receiving donations or making grants.	
4. Solicitation License <ul style="list-style-type: none"> Obtain solicitation licenses in the states where charitable solicitations are or will be made. Also obtain necessary licenses when engage professional fundraising consultants/solicitors. 	SoS in states of solicitation	Prior to making solicitations.	
5. Sales/Use Tax Exemption <ul style="list-style-type: none"> Obtain exemption from state sales/use taxes. Some states issue certificates of exemption; others require application for a refund. 	Department of Revenue in state of purchases	Prior to making purchases.	
6. Insurance <ul style="list-style-type: none"> Obtain directors and officers and other appropriate insurance coverage. 	Insurance broker	Best practices to have at all times.	
7. Governance <ul style="list-style-type: none"> Locate certified or filed copies of your organization’s Charter (Certificate of Incorporation, etc.) and all amendments. Bylaws should include indemnification of directors and officers. Check the governance documents to determine who has authority to amend, if needed. Ensure that all governance policies and procedures are current (i.e., conflict of interest, whistleblower, document retention, etc.) 	Discuss with Board of Directors	Start preliminary discussion now.	
8. Form 990 <ul style="list-style-type: none"> Make sure the foundation has filed all Forms 990 and has copies available upon request by donors. Failure to file a Form 990 can lead to revocation of the foundation’s tax-exempt status. 	Internal	Ongoing.	

What to Do	Contact	Timing	Comments/Notes
<p>9. Affidavit of University</p> <ul style="list-style-type: none"> Signed affidavit from the college or university stating that (a) the local housing corporation receiving the grant is associated with such college or university and (b) the proposed use of the grant is “for purposes that would be permissible for a dormitory or other residential facility of the college or university.” 	Local housing corporations should obtain from college or university	Prior to execution of grant agreement.	
<p>10. Revise Grant Agreement</p> <ul style="list-style-type: none"> Purpose/amount - The purpose and amount of the grant should be set forth in detail and in compliance with the requirements of CHIA. Indemnification – The recipient housing corporation should be required to indemnify the foundation for breach of any reps/warranties or covenants in the Grant Agreement. Reps/warranties - Include reps/warranties that (i) the recipient housing corporation will use the grant solely to provide, improve, operate, or maintain collegiate housing property, (ii) that 85% of the residents¹ of the collegiate housing property are full-time students at the associated college or university, (iii) that no part of the grant will be used to provide physical fitness facilities, (iv) that the local housing corporation is a 501(c)(7) organization or a 501(c)(2) organization holding title to property exclusively for the benefit of a 501(c)(7) organization, and (v) that the recipient housing corporation is in good standing, duly incorporated, and duly authorized to enter into the Grant Agreement. Conditions precedent – Require that the housing corporation has obtained a signed affidavit from the college or university associated with the collegiate housing property as described above. Consider whether to include as a condition precedent to the grant that the recipient housing corporation become a subsidiary of the national housing corporation. Evaluate whether additional charitable contributions should be required in connection with the housing grant to protect the tax-exempt status of the national foundation. Reporting - Require monthly or quarterly and final reports tracking the amount of the grant dispersed, the use of the grant funds, and the progress of the project. Clawback - Include clawback provision requiring the recipient housing corporation to return/refund grant money that is not used for permitted purposes. Foundation fees – Clearly state the amount and timing of the administrative fee payable to the foundation. 	Internal / Outside counsel	Prior to or soon after the passage of CHIA.	

¹ “Substantially all” has been interpreted under different provisions of the tax code to mean 85% or more.

What to Do	Contact	Timing	Comments/Notes
11. Accounting Procedures and Record Keeping <ul style="list-style-type: none"> • Ensure that you have accounting procedures in place to process and track restricted gifts earmarked for CHIA grants. • Modify record keeping as needed to properly document and track CHIA grants. 	Internal	Prior to or soon after the passage of CHIA.	
12. Human Resource Assessment <ul style="list-style-type: none"> • Assess your current staffing structure to discern whether you are prepared to take full advantage of the new fundraising opportunities presented by CHIA. If not, determine whether it would be in the best interest of your organization to add additional staff, partner with a development consulting firm, or both. 	Internal/Board of Directors	Prior to or soon after the passage of CHIA.	
13. Volunteer Training <ul style="list-style-type: none"> • Train volunteers responsible for or working in connection with CHIA grants. 	Volunteer coordinator	Soon after the passage of CHIA.	
14. Fee Schedule for Accounts <ul style="list-style-type: none"> • Consider amount of the foundation fee for overseeing, processing, and monitoring CHIA grants. 	Internal/Board of Directors	Soon after the passage of CHIA.	
15. Legal Counsel <ul style="list-style-type: none"> • Seek advice and help from outside legal counsel if needed. 	Outside counsel	As issues arise.	

Collegiate Housing and Infrastructure Act ~ Compliance Checklist for National Housing Corporation

What to Do	Contact	Timing	Comments/Notes
1. Educate and Inspire Local Chapters <ul style="list-style-type: none"> Provide information about CHIA and the opportunities available to all local chapters that have or desire a chapter house. 	Local chapters	Prior to or soon after the passage of CHIA.	
2. State Good Standing <ul style="list-style-type: none"> Confirm the national housing corporation is in good standing with the state of incorporation, has paid all applicable fees, and made all applicable filings on time. Check foreign qualifications. 	SoS	Review prior to the passage of CHIA or reorganization.	
3. IRS Determination Letter <ul style="list-style-type: none"> Locate a copy of the housing corporation's IRS determination letter. Note, obtaining a duplicate copy or new determination letter from the IRS can take up to 6 months. 	IRS	Review prior to the passage of CHIA or reorganization.	
4. Form 1024 <ul style="list-style-type: none"> Locate a copy of the national housing corporation's Form 1024. Review for consistency with current operations. 	IRS	Review prior to the passage of CHIA or reorganization.	
5. Insurance <ul style="list-style-type: none"> Obtain directors and officers and other necessary insurance coverage. 	Insurance broker	Consider prior to the passage of CHIA.	
6. Governance <ul style="list-style-type: none"> Evaluate current governance documents and structure of housing corporations. Locate certified or filed copies of your organization's Charter (Certificate of Incorporation, etc.) and all amendments. Bylaws should include indemnification of directors and officers. Check the governance documents to determine who has authority to amend. Ensure that all governance policies and procedures are current (i.e., conflict of interest, whistleblower, document retention, etc.) 	Board of Directors	Start preliminary discussions now.	
7. Form 990 <ul style="list-style-type: none"> Make sure the national housing corporation has filed all Forms 990. Failure to file a Form 990 can lead to revocation of an organization's tax exempt status. 	Internal	Subject to public disclosure upon request.	

What to Do	Contact	Timing	Comments/Notes
8. Affidavit of University <ul style="list-style-type: none"> Signed affidavit from the college or university stating that (a) the local housing corporation receiving the grant is associated with such college or university and (b) the proposed use of the grant is “for purposes that would be permissible for a dormitory or other residential facility of the college or university.” 	Work with local chapters to obtain	Prior to execution of grant agreement.	
9. Resident <ul style="list-style-type: none"> Verify and continue to monitor to make certain that at all times at least 85% of current residents of the chapter house are full time students. 	Board of Directors	Periodically	
10. Volunteer Training <ul style="list-style-type: none"> Train volunteers responsible for or working in connection with CHIA grants. 	Internal/Board of Directors	Soon after the passage of CHIA.	
11. Legal Counsel <ul style="list-style-type: none"> See advice and help from outside legal counsel if needed. 	Outside counsel	As issues arise.	

Collegiate Housing and Infrastructure Act ~ Compliance Checklist for Local House Corporation

What to Do	Contact	Timing	Comments/Notes
1. Fundraising <ul style="list-style-type: none"> Consider and take advantage of new fundraising opportunities to improve and update housing facilities. Assess areas of particular need such as fire safety and structural improvements and renovations. Engage professional fundraising consultants as needed. 	Board of Directors	Prior to passage of CHIA.	
2. State Good Standing <ul style="list-style-type: none"> Confirm the local housing corporation is in good standing with the state of incorporation, has paid all applicable fees, and made all applicable filings on time. 	SoS	Prior to receiving any grants.	
3. IRS Determination Letter for Local Housing Corporation <ul style="list-style-type: none"> Locate a copy of IRS determination letter confirming status as a 501(c)(7) or 501(c)(2) organization. Note, obtaining a duplicate copy or new determination letter from the IRS can take up to 6 months. 	IRS	Prior to receiving any grants.	
4. Form 1024 <ul style="list-style-type: none"> Locate a copy of the housing corporation's Form 1024 Application for Recognition of Exemption. Review for consistency with current operations. 	IRS	Subject to public disclosure upon request.	
5. Governance <ul style="list-style-type: none"> Evaluate current governance documents and structure of local housing corporation. Locate certified or filed copies of your organization's Charter (Certificate of Incorporation, etc.) and all amendments. Bylaws should include indemnification of directors and officers. Check the governance documents to determine who has authority to amend (typically the Board of Directors). Ensure that all governance policies and procedures are current (i.e., conflict of interest, whistleblower, document retention, etc.) 	Board of Directors	Start preliminary discussions now.	
6. Form 990 <ul style="list-style-type: none"> Make sure the local housing corporation has filed all Forms 990. Failure to file a Form 990 can lead to revocation of an organization's tax exempt status. 	Internal	Subject to public disclosure upon request.	
7. Affidavit of University <ul style="list-style-type: none"> Obtain a signed affidavit from the college or university stating that (a) the local housing corporation is associated with such college or university and (b) the proposed use of the grant is "for purposes that would be permissible for a dormitory or other residential facility of the college or university." 	Appropriate college or university representative	Prior to execution of grant agreement.	

What to Do	Contact	Timing	Comments/Notes
8. Residents <ul style="list-style-type: none"> Verify and continue to monitor to make certain that at all times at least 85% of current residents of the chapter house are full time students. 	Board of Directors	Periodically.	
9. Volunteer Training <ul style="list-style-type: none"> Train volunteers responsible for or working in connection with CHIA grants. 	Volunteer coordinator	Soon after the passage of CHIA.	
10. Legal Counsel <ul style="list-style-type: none"> See advice and help from outside legal counsel if needed. 	Outside counsel.	As issues arise.	