

# Overview of SPA and SPA Foundation Incorporation Statuses and Vote Background and Rationale

What follows is a technical overview of the incorporation statuses of SPA and the SPA Foundation and how incorporating under a c(3) IRS designation will be more beneficial to advance the practice, science, and impact of the field of personality assessment. Please see the [SPA and SPA Foundation Bylaws Review PP](#) for more specific information on the new Bylaws.

## Current Incorporation Statuses

*The Society for Personality Assessment – c(6)*

SPA is currently incorporated as a c(6) organization under New Jersey statute. Please see the Appendix for further clarification of how the IRS defines a c(6).

*The Society for Personality Assessment Foundation – c(3)*

The SPA Foundation is currently incorporated as a c(3) organization under Virginia statute. Please see the Appendix for further clarification of how the IRS defines a c(6).

## Distinctions between a c(3) and a c(6) Non-Profit Organization

The following chart\* helps highlight the distinctions between a c(3) and a c(6) organization, although both types of organizations are permitted to do things in the other column. Note that there's a deeper dive into the distinctions between advocacy and lobbying, which includes much legal language, in the appendix.

501(c)(3)	501(c)(6)
Providing educational conferences where technical papers are presented	Improvement of industry profit
Publishing a journal focused on educational matters	Offering programs designed to help professionals advance
Supporting local charities	Certification
Engaging in only insubstantial lobbying	Engaging in more than insubstantial lobbying
Operating programs of education in colleges and high schools	Engaging in political campaigns through independent expenditures or PAC
Maintaining a library of reference materials	Improving the image of the profession

\*Material gathered from the presentation *Six Entities, Four Years, One IRS Audit Later*, delivered at the 2020 Virtual ASAE Annual Meeting.

## Financial Benefits to being a c(3) Organization

There are significant financial benefits to being organized as a c(3) vs. a c(6). The following are a few of the benefits that only c(3) organizations are eligible for:

- Sales and Income Tax exemption (i.e. <https://www.tax.virginia.gov/nonprofit-organizations>)
- [Non-profit Mailing Permit](#) through USPS (e.g. regular letter is at the rate of \$.174)
- Free or significantly discounted hardware and software through [TechSoup](#)
- Public perception of a non-profit. For example, within the CARES Act, only c(3) organizations were considered non-profits for the Paycheck Protection Program.
- Google for Nonprofits eligibility, which includes Google Ads for Nonprofit, \$10,000 USD of in-kind advertising every month from Google Ads.

## How Best to Optimize SPA and SPA Foundation Relationship

Regarding bringing together the c6 and the c3, the SPA and SPA Foundation boards explored a variety of options in how to better organize the programming of SPA and the SPA Foundation, and ultimately decided on the following:

- SPA will transfer its membership lists and/or assets to the SPA Foundation, and we would rename the SPA Foundation, SPA (as a c(3)). All of the initiatives of both groups would be housed under this new c(3), and the former SPA (c(6)) organization would still exist until a time determined by the SPA Board.
- Because the SPA Foundation (c(3)) does not have a membership structure, the articles of incorporation and bylaws need to be amended. These new bylaws, unanimously approved by the SPA and SPA Foundation Boards, are in alignment with association management best practices. They provide more clarity to SPA Member rights, give graduate students the right to vote, and provide the SPA Board of Directors the ability to ensure SPA stays relevant in the future.

## The SPA Member Vote

There are two elements that SPA Members will be voting on between September 13 and October 12.

- The first element is to approve the transfer of the SPA assets, including transferring the members, memberships, and membership lists, to the Foundation, and to Dissolve SPA, with SPA Board empowered to determine the process and timing of the transfer and of the dissolution, per the [Plan of Distribution of Assets and Dissolution](#).
- The second element to approve is to amend the current Foundation's [Articles of Incorporation](#) and Bylaws as needed to have the SPA members, instead of the SPA corporation, constitute the membership of the Foundation, under terms, rights, and privileges similar to those as currently set forth in the SPA Articles and Bylaws.

## **The New Bylaws and Major Changes**

The SPA and SPA Foundation Boards approved a [new set of bylaws for this new organization](#), spending the past year combining both organizations bylaws into a new document. Both boards spent many meetings evaluating the new bylaws, discussing nuances with SPA's lawyer, as well as comparing the bylaws to peer organizations. The resulting proposed bylaws represent a document that should ensure the relevance and importance of personality assessment for years to come and create a more agile society that can adjust to the future needs and requests of its members. Please access the SPA and [SPA Foundation Bylaws Overview](#) for a detailed comparison among the three sets of bylaws.

# Appendix

## **c(6) designation according to the IRS**

According to the IRS website, c(6) organizations are for

“the exemption of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

The IRS defines a business league as the following:

“A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Trade associations and professional associations are business leagues.”

For more information about c(6) organizations, please visit <https://www.irs.gov/charities-non-profits/other-non-profits/business-leagues>.

## **c(3) designation according to the IRS**

According to the IRS website, c(3) organizations are

“an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.”

The IRS defines the exempt purposes as the following:

“The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.”

For more information about c(3) organizations, please visit <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>.

## **Defining and Distinguishing between Advocacy and Lobbying**

501c(3) organizations can lobby with limitations. The IRS defines lobbying as contacting an elected staff member to have them vote a certain way regarding legislation.

Advocacy is advancing the agenda of an organization. Here's an example of the distinction:

- **Advocacy:** We want you to support personality assessment for the following reasons.
- **Lobbying:** We want you to vote on this specific bill in this specific way which gives certain rights or privileges to SPA members for the following reasons.

Here are the financial limitations placed on a c(3) wanting to lobbying:

If a c(3) does lobbying, or “carrying on propaganda” in the statutory way, there is a certain dollar limit that they can spend. As a 501c(3), for annual spending up to \$500,000, up to 20% can be spent on lobbying, with amounts between \$500,000 and \$1M up to 15%, and so on in decreasing percentages. These dollar calculations of lobbying effort apply only if we make the 501(h) election (Form 5768). As an example, if we have \$600,000 in annual spending, we could spend \$115,000 in lobbying, and be within the lobbying limits if we make the 501(h) Election. If under this example, we exceeded our \$115,000 calculated limit, we would just be taxed on the excess that we spent on lobbying. To potentially lose our c(3) status, we would have to exceed this amount for three consecutive years.

If we do not make the 501(h) Election, we are covered by amorphous rules by which tax exemptions have been revoked for excess lobbying from groups in different situations that: (a) were deemed too visible in their lobbying; (b) were deemed to have put too much effort into lobbying; or (c) simply successful in their lobbying efforts.

The lesson is that if we are going to do any appreciable amount of lobbying, let's make the 501(h) Election and simply keep track of what we spend on lobbying, for reporting on the 990.