The Colorado Nonprofit Association greatly appreciates the opportunity to comment on the proposed rule changes for 501(c)(4) social welfare organizations. Along with many other exempt organizations, we look forward to engaging in dialogue with the IRS and working toward common sense ways to address the issues raised in these proposed rules.

Although we appreciate that the proposed rule changes have led to an important conversation, rather than implementing these rules, we feel that the IRS should work with 501(c)(4) organizations and other stakeholders to draft a new set of rules. Any new rules should seek to address the following goals as effectively as possible:

- making our nation’s campaign finance system more fair and transparent;
- protecting the ability of exempt organizations to engage in nonpartisan advocacy on public policy issues related to their exempt purposes;
- protecting the ability of exempt organizations to engage in nonpartisan efforts to educate voters and increase voter participation in elections; and
- proposing and defining clear limits on permitted candidate political activities for 501(c)(4) organizations consistent with their social welfare purposes.

While it is helpful that the IRS is soliciting feedback from stakeholders on the appropriate limit for candidate political activities for 501(c)(4) organizations, it is unclear how the proposed rules would apply in the absence of a clear limit. Under current regulations, 501(c)(4) organizations are allowed to engage in activities directly or indirectly supporting or opposing candidates for public office (also known as “political campaign intervention”) as a secondary activity. The proposed rules include a new and overly broad definition of “candidate-related political activity” but do not specify if this activity is totally prohibited or permitted up to a defined limit.

Since the definition of “candidate-related political activity” is overly broad, it would affect public communications currently permitted by law for many exempt organizations. This includes advocacy communications to influence the vote of an elected official if a candidate is mentioned and the communication happens to occur within sixty days of an election or thirty days of a primary. Additionally, nonpartisan voter education and other activities to facilitate voter participation would be deemed “candidate-related” regardless of when they occur. Under current regulations, these activities are permitted for 501(c)(4)s with few limits and for 501(c)(3) organizations they are permitted up to the “substantial part” limit.

If implemented, we are concerned that these rules would have a chilling effect on legitimate issue advocacy and nonpartisan voter engagement efforts currently permitted by law for social
welfare organizations. These rules would have a similar chilling effect if applied to 501(c)(3) charitable nonprofits. 501(c)(3) organizations are already prohibited from political campaign intervention, so these rules would place new limits on their nonpartisan activities to encourage voter participation and additional limits on lobbying.

**New Limits on Nonpartisan Voter Participation Activities**

The proposed rules specifically include nonpartisan voter registration, get out the vote efforts, and voter guides as candidate-related political activities. Our organization represents many 501(c)(3) organizations that promote civic engagement and help voters understand and participate fully in elections. Not only does federal law prohibit these activities from being conducted in a way that favors a particular party by 501(c)(3) organizations; many of these nonprofits willingly serve as trusted, impartial, and nonpartisan resources for voters on the elections process, key policy issues, and the candidates. Although these activities sometimes “relate” to candidates, we think it’s rare that our nonprofits harm our elections’ process by intervening in a political campaign. More often, they are instrumental to efforts to foster an engaged and educated citizenry. Similarly, many 501(c)(4) organizations choose to conduct nonpartisan voter education and participation activities but these activities are treated the same as activities that directly intervene in campaign.

**Limits on Activities to Influence Legislation Close to an Election**

Although campaign political activities are most likely to occur within a few months of election day, votes may occur in the same timeframe on ballot measures or on bills before legislative bodies. Under current federal law, 501(c)(3)s may lobby on such legislation up to the “substantial part” limit and 501(c)(4)s have few limits on their lobbying activity. Since elected officeholders may be both up for election and eligible to vote on bills- or express views on ballot measures - within sixty days of an election or thirty days of a primary, their views and votes may be relevant to a nonprofit’s lobbying activity. The proposed rules do not differentiate between types of communications that mention candidates occurring close to an election. A communication could be meant to influence a vote by an elected official who happens to be running for re-election. Similarly, a communication could reference the views of a respected citizen who is running for public office coincidentally. Influencing that official’s vote or view may be related to advancement of an exempt organization’s mission. The new rules could have a chilling effect on lobbying or issue advocacy close to an election.

**Broad Definitions of Candidates and Advocacy Communications**

While current rules for 501(c)(3)s and 501(c)(4)s seek to prohibit or limit political campaign intervention, the proposed rules broaden the definition of candidate to include appointed officials and judicial appointments. Currently, advocacy for executive or judicial branch appointments is not specifically limited by federal law. These activities are part of efforts by these entities to benefit society and they would be limited if these new rules are adopted.
Additionally, the rules on communications referring to candidates proximate to an election also broaden rules applying to advocacy communications. Federal Election Commission rules focus more on television, radio, and other broadcast media. Exempt organizations usually play a role in designing and paying for such communications with the goal of educating and influencing the public with respect to an issue or candidate. The proposed rules would include website communications that mention candidates whether such candidates are mentioned intentionally or incidentally. If a nonprofit praised a legislator on its website for voting on a particular bill and did not take that reference down within the election period, the communication could be deemed “candidate-related political activity.” Again, the rules do not allow for differentiation of intentional or inadvertent references to candidates.

**Limits on 501(c)(4) organizations working with 501(c)(3) Organizations**

Under the proposed rules, a 501(c)(4) is prohibited from making a contribution to another exempt organization unless the organization states that it does not engage in “candidate-related political activity.” This requirement appears to apply to the activities of the recipient organization and not how the contribution is used. A charitable donation by a 501(c)(4) to a 501(c)(3) could be prohibited, even if designated for activities other than public policy, if the 501(c)(3) engaged in political activity. In this example, the 501(c)(3) is prohibited from intervening in campaigns but could be disqualified based on nonpartisan voter engagement, referring to candidates in a lobbying communication, or another otherwise permitted activity.

Many 501(c)(3) organizations who educate the public on critical social issues form affiliated 501(c)(4) organizations to advance these issues in the political arena through lobbying and campaigning. 501(c)(4) organizations, on the other hand, rely on 501(c)(3) organizations to further educate the public or leverage charitable giving. Currently, these organization can provide financial support to each other to maximize their limited resources. 501(c)(4)s would be strictly limited in their ability to support 501(c)(3)s even their own 501(c)(3) arms.

**Summary of Comments**

The Colorado Nonprofit Association appreciates the complexity of developing clear rules to appropriately limit permitted activities by 501(c)(4) organizations to support or oppose candidates. We recognize the difficulty of addressing issues of “dark money” in our nation’s campaign finance system and reducing reliance on individual determinations based on facts and circumstances.

We encourage the IRS to solicit feedback from the tax-exempt sector on rules that can help grapple with these issues of transparency in campaign financing and preserving the voice of c4s on public policy issues and civic engagement, and again, we thank you for reviewing our comments and look forward to continuing this important discussion.

Sincerely,