

September 19, 2007

**AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2007-13 is available for public comments under this procedure. It was requested by Laurence Gold, Esq., on behalf of United American Nurses, AFL-CIO.

Draft Advisory Opinion 2007-13 is scheduled to be on the Commission's agenda for its public meeting of Monday, September 24, 2007.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on September 21, 2007.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

**CONTACTS**

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2007-13, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

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September 19, 2007

**AGENDA ITEM**

For Meeting of: 9-24-07

**SUBMITTED LATE**

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *RCK for RCS*  
Associate General Counsel

Amy L. Rothstein *ALR*  
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*  
Attorney

Subject: Draft AO.2007-13

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 24, 2007.

Attachment

1    **ADVISORY OPINION 2007-13**

2    Laurence E. Gold, Esq.  
3    Lichtman, Trister & Ross, PLLC  
4    1666 Connecticut Avenue, N.W.  
5    Fifth Floor  
6    Washington, D.C. 20009

DRAFT

7    Dear Mr. Gold:

8           We are responding to your advisory opinion request on behalf of the United  
9    American Nurses, AFL-CIO (the "Union") concerning the application of the Federal  
10   Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to  
11   the disaffiliation of the Union and the American Nurses Association (the "Association").  
12   You ask the Commission to confirm that a separate segregated fund ("SSF") to be  
13   established by the Union would not be affiliated with the Association's SSF.

14           The Commission concludes that the two organizations' SSFs would not be  
15   affiliated because the Union and the Association are not affiliated.

16   ***Background***

17           The facts presented in this advisory opinion are based on your letter and  
18   attachments received on June 26, 2007, as supplemented by a facsimile received on July  
19   12, 2007, telephone conversations with Commission staff on July 11 and 17, 2007, and  
20   your supplemental submission received on August 30, 2007.

21           **The Association**

22           The Association is a non-stock District of Columbia corporation organized under  
23   Section 501(c)(6) of the Internal Revenue Code. The Association operates as a national  
24   professional organization dedicated to advancing the standing and interests of registered  
25   nurses ("RNs"), including nurse managers and supervisors. You have described the  
26   Association as "a loose confederation of 75 disparate nursing-related organizations"

1 including the Association's 54 constituent member associations (State nursing  
2 associations),<sup>1</sup> the Union, the Center for American Nurses, 16 national nursing  
3 organizations, and three related entities. In addition, as of May 2007, 1,182 individuals  
4 who are not otherwise members of a State nursing association are members of the  
5 Association. The Association is the "only full-service professional organization"  
6 representing the nation's RNs. See [www.nursingworld.org/affil](http://www.nursingworld.org/affil).

7 The Association's governmental structure consists of a House of Delegates with  
8 675 delegates, including 600 who are elected by the State nursing associations; fifteen  
9 Association directors and officers; and 60 delegates from other Association affiliates,  
10 including only one delegate from the Union (the Union president). Of the 675 delegates,  
11 approximately 630 have voting rights. The Association's Board of Directors, elected by  
12 the delegates, handles the Association's day-to-day operations. See Association 2000  
13 Bylaws, arts. V and VI.

14 While the Association itself has never made union representation of RNs a  
15 significant focus, 27 of its State nursing association members are considered "labor  
16 organizations" under the National Labor Relations Act. See 29 U.S.C. 152(5). These 27  
17 State nursing associations engage in collective bargaining on behalf of their eligible RN  
18 members.

19 In 1999, the RNs represented for collective bargaining by the State nursing  
20 associations created the Union as a "national labor entity" and "an autonomous labor body  
21 within the [Association] that will establish and implement a progressive, ambitious  
22 national labor agenda as well as develop labor policy for the organization." Association

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<sup>1</sup> The Association's 54 State nursing association members, in turn, have approximately 157,000 individual RN members.

1 Press Release, "United American Nurses Announces Founding Members" (Nov. 5, 1999).  
2 The Union was to serve as the national union for the State nursing associations that  
3 engaged in collective bargaining. The Association granted the Union autonomy in all  
4 things required by law to be addressed by an insulated labor body. Association 2000  
5 Bylaws, art. VIII, sec. 6(a).

6 **The Union**

7 The Union is an unincorporated national labor organization organized under  
8 Section 501(c)(5) of the Internal Revenue Code. Through the Association's 27 State  
9 nursing associations<sup>2</sup> that engage in collective bargaining, and the Union's two national  
10 bargaining councils,<sup>3</sup> the Union represents RNs in collective bargaining with private  
11 employers and the Veterans Administration of the United States.

12 The Union's highest governing body is its National Labor Assembly, comprising  
13 delegates elected by individual RNs represented in collective bargaining by the State  
14 nursing associations and the national bargaining councils. The National Labor Assembly  
15 has the authority to develop labor policies for Union members; levy monetary assessments  
16 on members; collect, analyze and disseminate labor data; and develop the Union's strategic  
17 plan. Association 2000 Bylaws, art. VIII, sec. 8(h).

18 The National Labor Assembly also elects, from among the Union-represented RNs,  
19 the Union's Executive Council, which comprises a Chair, Vice-Chair, Secretary-Treasurer

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<sup>2</sup> These 27 State nursing associations are the Union's subordinate State affiliate unions, insofar as they engage in collective bargaining.

<sup>3</sup> The Union's national bargaining councils are subordinate affiliated unions representing Union member RNs who are not members of, and therefore are not represented by, any of the 27 State nursing associations that engage in collective bargaining. Those RNs represented by a national bargaining council for collective bargaining are the only Union members eligible for individual membership in the Association. Currently, of the approximately 97,000 Union members, fewer than 500 are eligible for individual membership in the Association.

1 and four directors. The Executive Council meets at least twice a year to set Union  
2 priorities, policies and procedures; determine membership status within the Union; appoint  
3 committees and task forces; and resolve internal disputes. *Id.*, art. VIII, secs. 8(h), 9 and  
4 9(d).

5 Originally, the Association's Executive Director had the authority to "manage" the  
6 Union, including implementing National Labor Assembly and Executive Council policies.  
7 *Id.*, art. VIII, sec. 6. The Association's Executive Director also appointed the Union's  
8 Program Director. *Id.*, art. VIII, sec. 9(d)(10)-(11). Additionally, the Association provided  
9 the Union with staff and financial support, based on a Union budget approved by the  
10 Association's Board of Directors.

11 **The Association/Union "Autonomy and Affiliation Agreement" (the**  
12 **"Agreement")**

13 In 2001, the AFL-CIO authorized issuance of a charter to the Union as a direct  
14 affiliate. The charter was granted only to the Union, not to the Association.<sup>4</sup>

15 In 2002, represented by separate legal counsel, the Union and the Association  
16 negotiated a new relationship. The negotiations took place over seven months and  
17 included dozens of negotiating sessions, which you describe as occasionally "contentious."  
18 You characterize the result as "a new, arm's length contract that rested on two basic  
19 premises." First, the Union would be a "wholly autonomous, self-governing national labor  
20 organization" related to the Association as its only Associate Organization Member for

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<sup>4</sup> The AFL-CIO charters only labor organizations whose principal function is collective bargaining representation. The Association, a professional organization, was and is ineligible for a charter.

1 collective bargaining.<sup>5</sup> Agreement, para. 1. Second, the Union would be a “strong, self-  
2 governing, truly competitive national union with its own finances, governance, staff and  
3 direction.” Agreement at 1.

4 The Agreement stated, among other things, that all of the Association’s State  
5 nursing associations that engage in collective bargaining would also affiliate with the  
6 Union by July 1, 2005, as State subordinate organizations.<sup>6</sup> Such affiliation would  
7 automatically make all of the RN members of those State nursing associations eligible for  
8 individual membership in the Union. Union Constitution, art II, sec. A(1). You have  
9 informed us, however, that each individual RN would have to take the affirmative step of  
10 joining the Union to become a member. Because the Union and not the Association would  
11 be the RNs’ labor organization, the Union indemnified the Association against any claims  
12 of breach of duty of fair representation.

13 The two organizations separated their staffs and pension plans. Paragraph 14 of the  
14 Agreement allows for a Joint Staff Transition Committee to facilitate changes in the  
15 financial, administrative “and related practices” of the organizations. This committee is  
16 now defunct, as the separation of staff and pension plans has been completed.

17 Paragraph 13 of the Agreement creates a “Joint Leadership Committee,” consisting  
18 of officers and directors of each organization. The purpose of this committee is to meet  
19 semi-annually to coordinate and address issues of mutual concern. While this committee  
20 exists and meets occasionally, you indicate that it has no formal authority to require either  
21 organization to take action of any kind.

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<sup>5</sup> The Association also created the Center for American Nurses as an Associate Organizational Member to represent the workplace interests of those RNs not participating in collective bargaining.

<sup>6</sup> Of the 54 State nursing association members of the Association, 27 associations were eligible for this affiliation with the Union.



1           The Agreement also requires the separation of treasuries and bifurcation of dues  
2 payments to the organizations. Under this bifurcated system, each State nursing  
3 association allied with both the Union and the Association sends one check to the Union  
4 for its portion of the collective bargaining members' dues and another check to the  
5 Association for its portion. See FAQ; Question 8; Agreement, para. 5.

6           Under the Agreement, the Union pays the Association a specified administrative  
7 fee for services under a separate services contract. The fee is a negotiated price for the  
8 specified services and is principally due to the organizations' co-location of their offices.  
9 The Union agreed to pay to the Association \$900,000 per year for the initial five-year life  
10 of the contract and \$1.275 million per year thereafter until the Agreement is terminated.<sup>7</sup>  
11 After the initial five-year term, either party may terminate the Agreement with six months'  
12 prior written notice. Agreement, paras. 9 and 12.

13           Also, under the Agreement, the Union will pay the equivalent of the amount of  
14 dues for each Union member who was also a member of the Association as of  
15 September 5, 2002, and who later ended her membership in the Association but maintains  
16 her Union membership. Agreement, para. 16.

17           Finally, the Agreement states that the Association will carry collective bargaining  
18 insurance for the Union, as coverage is included in the Association's current insurance  
19 package. Agreement, Attachment I. The Union pays the Association for that portion of  
20 the insurance coverage dealing with collective bargaining, and the Union also carries its  
21 own insurance policy.

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<sup>7</sup> While the Agreement states that the \$900,000 annual fee for services is a "discounted" rate, you indicate that a report by a management consulting firm retained by the Union in 2006 concluded that the Union could secure the same services from alternative sources for substantially less than \$900,000 per year.

1           **The Association After the Agreement**

2           As a result of the Agreement, the Association rewrote its bylaws (*see* Association  
3 2005 Bylaws) to reflect the reorganization and separation of the two organizations. Under  
4 the new bylaws, the only official participation the Union has in the governance of the  
5 Association is through its President, who has an *ex officio* seat on the Association's Board  
6 of Directors and is also a member of the Association's House of Delegates, with limited  
7 voting rights.

8           The Association's SSF is operated by a Board of Trustees. The Association's  
9 Board of Directors, of which the Union President is one of 17 voting members, appoints  
10 the SSF's Board of Trustees. Association 2005 Bylaws, art. V, sec. 5(aa). You have  
11 informed us, however, that the Board of Trustees includes no representation from the  
12 Union and the Union exercises no direction or control over the Association's SSF.

13           **The Union After the Agreement**

14           Following the organizations' approval of the Agreement, the Union drafted its own  
15 constitution; this process did not involve the Association in any way. While the Union's  
16 governing structure did not change under the Agreement, the Union's Constitution now  
17 excludes the Association from any participation in the Union's governance.

18           The Union's Constitution declares that the Union's objectives include collective  
19 bargaining on behalf of RNs, organizing RNs into the Union and its State nursing  
20 associations, and influencing public policy affecting RNs. Currently, through its 27  
21 subordinate State affiliates, the Union represents approximately 97,000 RNs in collective  
22 bargaining.

1 Three of the Union's current 24 employees were Association employees before the  
2 restructure. None of the Union's employees is a current Association employee and no  
3 Union officer was previously an Association officer.

4 In March 2007, the Union's National Labor Assembly adopted a resolution to  
5 establish a Union-connected SSF to "raise money, endorse candidates, and build strong  
6 allies in the legislature." Union Resolution 2007-14. The resolution also states that the  
7 Union, "has differing political and legislative agendas from the [Association]," it "needs to  
8 become its own political entity to represent unionized [RNs] nationally," and in order "to  
9 represent [the Union's] unique perspective it must promote its own political agenda." The  
10 Union intends to exercise exclusive direction and control over its SSF.

11 ***Question Presented***

12 *If the Union establishes and registers an SSF with the Commission, would that SSF*  
13 *and the Association's SSF be affiliated within the meaning of the Act?*

14 ***Legal Analysis and Conclusions***

15 No, if the Union establishes and registers an SSF with the Commission, that SSF  
16 would not be affiliated with the Association's SSF.<sup>8</sup>

17 *a. Applicable Law*

18 The Act and Commission regulations provide that political committees, including  
19 SSFs, that are established, financed, maintained or controlled by the same corporation,  
20 labor organization, person, or group of persons, including any parent, subsidiary, branch,  
21 division, department, or local unit thereof, are affiliated. See 11 CFR 100.5(g)(2) and

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<sup>8</sup> You also asked whether, if the Commission concludes that the Union's SSF would be affiliated with the Association's SSF, contributions by the Union's SSF and the Association's SSF must be aggregated for the purposes of the Act. The Commission need not address this question because it concludes that the Union's SSF would not be affiliated with the Association's SSF.

1 110.3(a)(1)(ii). Contributions made to or by such political committees are considered to  
2 have been made to or by a single political committee. 2 U.S.C. 441a(a)(5); 11 CFR  
3 100.5(g)(2) and 110.3(a)(1).

4 *b. Per Se Affiliation*

5 Commission regulations identify organizations that are *per se* affiliated, and hence  
6 whose SSFs are *per se* affiliated. These organizations include a single national or  
7 international union and/or its local unions or other subordinate organizations; an  
8 organization of national or international unions and/or all of its State and local central  
9 bodies; a membership organization (other than political party committees), including trade  
10 or professional associations, and/or related State and local entities of that organization or  
11 group; and the same person or group of persons. *See* 11 CFR 100.5(g)(3)(ii), (iv) and (v);  
12 110.3(a)(2)(ii), (iv) and (v).

13 The Association is not a “labor organization” as defined at 11 CFR 100.134(b),<sup>9</sup>  
14 and therefore is not a local union or subordinate organization of the Union. Similarly,  
15 while it appears from its bylaws that the Association might qualify as a “membership  
16 organization” as defined at 11 CFR 100.134(e),<sup>10</sup> the Union is not a related State or local  
17 subordinate organization. Nor do the Union and the Association fit the remaining  
18 categories of organizations identified as *per se* affiliated in Commission regulations.

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<sup>9</sup> Further evidence of the Association’s lack of status as a labor organization is that the AFL-CIO would affiliate only with the Union, and not with the Association.

<sup>10</sup> The Association is not a party to this request and has not asked the Commission to determine its status as a “membership organization” under 11 CFR 100.134(e). Accordingly, the Commission is not making a determination as to whether the Association is, in fact, a membership organization. The Statement of Organization that the Association’s SSF filed with the Commission identifies the Association as a corporation without capital stock. The Statement of Organization is available on the Commission’s website, <http://query.nictusa.com/cgi-bin/fecimg/?C00017525>.

1 See 11 CFR 100.5(g)(1), (2) and (3) and 110.3(a)(1) and (2). Accordingly, the Union and  
2 the Association are not *per se* affiliated.

3 *c. Affiliation Factors*

4 In the absence of *per se* affiliation, Commission regulations provide for an  
5 examination of various factors in the context of the overall relationship to determine  
6 whether one sponsoring organization has established, financed, maintained or controlled  
7 the other sponsoring organization or committee and, hence, whether their respective SSFs  
8 are affiliated. See 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J); 11 CFR 110.3(a)(3)(ii) and  
9 (ii)(A)-(J); Advisory Opinion 2006-12 (TCU/IAM). These ten circumstantial factors, each  
10 of which is discussed below, do not constitute an exhaustive list and other factors may be  
11 considered. See 11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii); Advisory Opinion 2004-41  
12 (CUNA Mutual).

13 (A) *Whether one sponsoring organization owns a controlling interest in the*  
14 *voting stock or securities of another sponsoring organization. 11 CFR*  
15 *100.5(g)(4)(ii)(A) and 110.3(a)(3)(ii)(A).*  
16

17 Neither the Union nor the Association is a stock-based organization. Neither  
18 organization issues voting stock or securities. Accordingly, neither organization has a  
19 controlling interest in the voting stock or securities of the other organization.

20 (B) *Whether a sponsoring organization or committee has the authority or*  
21 *ability to direct or participate in the governance of another sponsoring*  
22 *organization or committee through provisions of constitutions, bylaws,*  
23 *contracts or other rules, or through formal or informal practices or*  
24 *procedures. 11 CFR 100.5(g)(4)(ii)(B) and 110.3(a)(3)(ii)(B).*  
25

26 Under the Agreement, the Union's Constitution and the Association's bylaws, the  
27 Association has no ability to participate in the governance of the Union.

1           The Union has only a minimal ability to participate in the governance of the  
2 Association. In accordance with Article IV, sec. 2(a)(4) of the Association's 2005 Bylaws,  
3 the Union President has an *ex officio* seat on the Association's Board of Directors. As  
4 such, the Union President may vote on certain matters before the House of Delegates, but  
5 may not vote in the election of the Association's officers and directors. See Association  
6 2005 Bylaws, art. IV, sec. 7(d). When cast, the Union President's vote as a delegate is  
7 only 0.16% of the votes cast by delegates.

8           The Union President is also one of the Association's 17 Directors on the Board.  
9 See Association 2005 Bylaws, art. IV, sec. 2, para. 4. The Association President may  
10 designate that the Union President be excluded, however, from business or confidential  
11 matters regarding the Association's "strategic position in relation to other organizations."  
12 Association 2005 Bylaws, art. II, sec. 2(d). You have informed us that the Union President  
13 is routinely excluded from that portion of the Board meeting pertaining to Union matters.

14           Beyond the Union President being one of 17 votes on the Association's Board of  
15 Directors for the appointment of the SSF's Board of Trustees, there is no indication that  
16 any Union representative may direct or participate in the governance of the Association's  
17 SSF.

18           Further, the Union's current Vice-President was elected to the Association's Board  
19 of Directors in her individual capacity and does not represent the Union on the  
20 Association's Board. You have informed us that like the Union President, the Vice-  
21 President is excluded from discussions pertaining to the Union.

22           Finally, paragraph 13 of the Agreement allows for a "Joint Leadership Committee"  
23 consisting of three members each from the Association's Board of Directors and the

1 Union's Executive Council, as well as the Association's CEO and the Union's Executive  
2 Director. Under the Agreement, the committee is to meet semi-annually to coordinate and  
3 address issues of mutual concern. You have informed us that this committee has no formal  
4 authority to act on behalf of either organization however, and that its purpose is simply to  
5 provide a formal liaison process between the two organizations. Thus, the committee does  
6 not allow either organization to participate in the governance of the other.

7 Thus, the authority or ability of either organization to direct or participate in the  
8 governance of the other is, at most, minimal, giving neither organization direction over, or  
9 control of, the governance of the other organization. *See Advisory Opinion 2003-21*  
10 *(Lehman Bros.)* (finding that while Corporation A participated in the governance of  
11 Corporation B through its 19% ownership of B's voting stock, that participatory interest  
12 was not significant enough to overcome the separation of governance required by B's  
13 articles of incorporation and bylaws and give Corporation A direction over, or control of,  
14 Corporation B).

15 (C) *Whether a sponsoring organization or committee has the authority or*  
16 *ability to hire, appoint, demote or otherwise control the officers or other*  
17 *decisionmaking employees of another sponsoring organization or*  
18 *committee. 11 CFR 100.5(g)(4)(ii)(C) and 110.3(a)(3)(ii)(C).*  
19

20 The Association has no representation on the Union's National Labor Assembly,  
21 which is the body that elects the Union's officers and directors who comprise the Union's  
22 Executive Council. Further, although the Union President, as an *ex officio* member of the  
23 Association's Board of Directors, is a member of the Association's House of Delegates,  
24 she cannot vote on the Association's officers and directors. Association 2005 Bylaws, art.  
25 IV, sec. 7(d). Thus, this affiliation factor is not satisfied.

1           (D) *Whether a sponsoring organization or committee has common or*  
2           *overlapping membership with another sponsoring organization or*  
3           *committee which indicates a formal or ongoing relationship between the*  
4           *sponsoring organizations or committees. 11 CFR 100.5(g)(4)(ii)(D) and*  
5           *110.3(a)(3)(ii)(D).*  
6

7           The only Union members who are eligible to join the Association directly in its  
8           “Individual Member Division” are those who are not also members of a State nursing  
9           association. You state that fewer than 500 of the Union’s 97,000 members are currently  
10          eligible for this Association membership. Thus, assuming that each eligible Union member  
11          becomes a member of the Association through its Individual Member Division, only 0.5%  
12          of the Union’s membership would directly overlap with the Association’s membership.

13          In addition to direct overlap, an indirect overlap in membership exists between the  
14          individual members in the Union and individual members in the State nursing associations  
15          that are, themselves, members of the Association.<sup>11</sup> Approximately 97,000 individual  
16          members of the Union are members of the 27 State nursing associations that engage in  
17          collective bargaining. There are approximately 157,000 individual members in the 54  
18          State nursing association members of the Association, creating a maximum possible  
19          indirect overlap of approximately 62%.

20          In Advisory Opinion 2004-41 (CUNA Mutual), the Commission examined the  
21          relationship between a trade association whose direct membership consisted of credit  
22          unions, and the for-profit mutual insurance company established by the trade association.  
23          Although the Commission found minimal direct overlap in membership, it also examined  
24          the overlap between the individual insurance policyholders and the individual credit union

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<sup>11</sup> There is no indication that the Association is a federation of State nursing associations, such that the individual members of the State nursing associations may be considered direct members of the Association. See 11 CFR 100.134(i) and 114.1(e)(5).



1    accountholders. The Commission noted that “membership overlap may provide evidence  
2    of a formal or ongoing relationship where two organizations are populated by largely the  
3    same people in a manner suggesting an organized control over both groups.” (Citing  
4    Advisory Opinions 2002-15 (American Urological Association, Inc.) and 1995-12  
5    (Independent Bankers Association of America)). The Commission concluded, however,  
6    that the ongoing relationship between the trade association and the insurance company was  
7    limited to arm’s length transactions, and the overlap between policyholders and  
8    accountholders appeared to be a consequence of the organization’s business arrangements,  
9    rather than evidence of a relationship.

10       Similarly, in this case, any direct or indirect overlap in membership between the  
11    Union and the Association appears to be the result of the negotiated provisions in the  
12    Agreement. The Union’s Constitution provides that any RN who is a member of the  
13    Association’s State nursing associations that engage in collective bargaining will be  
14    eligible for membership in the Union. Union Constitution, art.II, sec. A(1). You state that  
15    the RN is then free to join or not to join the Union as an individual member, and is free to  
16    maintain or terminate her membership in the Association through the State nursing  
17    association. Accordingly, as in the CUNA Mutual case, “even if there is significant  
18    overlap between [the Association’s 27 State nursing association members and the Union’s  
19    individual members], such overlap would not by itself constitute sufficient evidence that  
20    one organization currently finances, maintains or controls the other.” Advisory Opinion  
21    2004-41. Accordingly, this factor does not indicate that the two organizations are  
22    affiliated.

1

2           (E)    *Whether a sponsoring organization or committee has common or*  
3                    *overlapping officers or employees with another sponsoring organization or*  
4                    *committee which indicates a formal or ongoing relationship between the*  
5                    *organizations or committee. 11 CFR 100.5(g)(4)(ii)(E) and*  
6                    *110.3(a)(3)(ii)(E).*

7           and

8           (F)    *Whether a sponsoring organization or committee has any members, officers*  
9                    *or employees who were members, officers, or employees of another*  
10                   *sponsoring organization or committee which indicates a formal or ongoing*  
11                    *relationship or the creation of a successor entity. 11 CFR 100.5(g)(4)(ii)*  
12                    *(F) and 110.3(a)(3)(ii)(F).*

13

14           Prior to the Agreement, the Association staff performed all of the staff functions for  
15 the Union. However, the organizations stopped sharing staff after the Agreement took  
16 effect. Paragraph 14 of the Agreement provides for a "Joint Staff Transition Committee,"  
17 which you have informed us is now defunct because the transition of staff has been  
18 complete for years.

19           The Union and the Association have only one official overlapping decision-maker,  
20 namely the Union President, and one unofficial overlapping officer, the Union Vice-  
21 President, as discussed above. You have informed us that "any Union member who runs  
22 for one of the 15 elected seats on the Association's Board of Directors at the House of  
23 Delegates meeting does so and, if elected, serves in that position as an individual and not  
24 as a representative of the Union." Moreover, only three of the Union's current twenty-four  
25 staff members were formerly employed by the Association. Thus, the application of  
26 factors (E) and (F) do not point to affiliation.

27           (G)    *Whether a sponsoring organization or committee provides goods in a*  
28                    *significant amount or on an ongoing basis to another sponsoring*  
29                    *organization or committee. 11 CFR 100.5(g)(4)(ii)(G) and*  
30                    *110.3(a)(3)(ii)(G).*

31           and

1           (H) *Whether a sponsoring organization or committee causes or arranges for*  
2           *funds in a significant amount or on an ongoing basis to be provided to*  
3           *another sponsoring organization or committee. 11 CFR 100.5(g)(4)(ii)(H)*  
4           *and 110.3(a)(3)(ii)(H).*

5  
6           Although the two organizations share office space and the Association performs  
7           some administrative tasks for the Union, the Union pays the Association for the office  
8           space and services under the Agreement. Further, the \$900,000 paid by the Union for the  
9           shared office space and services is not a significant portion of the Association's receipts  
10          (approximately 2.1%), or of the Union's total disbursements (approximately 6.8%). These  
11          payments for services do not suggest affiliation. See Advisory Opinion 1996-42 (Lucent  
12          Technologies) (finding that the SSFs of two corporations were disaffiliated even though  
13          one of the corporations had agreed to pay the other corporation at least \$3 billion over  
14          three years for goods and services, when that amount represented only a "small  
15          percentage" of the recipient corporation's revenues.)

16          Under paragraph 8 of the Agreement, the Association agreed to make a one-time  
17          grant of \$740,000 in working capital and transitional support to the Union upon the  
18          restructuring of the two organizations. The Commission has recognized that such  
19          "transactions, rather than illustrating the continued affiliation of the two organizations,  
20          instead can be seen as part of the process to establish the independence and separation of  
21          [an entity] from its organizational parent." Advisory Opinion 2000-28 (American Seniors  
22          Housing Association) (footnote omitted). Similarly here, the provision of a one-time grant  
23          by the Association under the Agreement can be seen as part of the process of establishing  
24          the Union's independence and separation from the Association.

25          (I) *Whether a sponsoring organization or committee had an active or*  
26          *significant role in the formation of another sponsoring organization or*  
27          *committee. 11 CFR 100.5(g)(4)(ii)(I) and 110.3(a)(3)(ii)(I).*

1           The RNs represented by 27 of the Association's state nursing associations formed  
2 the Union in 1999. However, under the Agreement, the two organizations separated their  
3 staffs, pension plans and treasuries and bifurcated the dues paid by members. Further, the  
4 Union now pays a negotiated price to the Association for the shared office space and  
5 administrative services. Finally, under the Agreement, the Association no longer has any  
6 participatory rights in the governance of the Union, and the Union has only minimal  
7 participatory rights in the governance of the Association and the Association's SSF.

8           The Commission has recognized that one organization's formation of another does  
9 not in and of itself make the two organizations permanent affiliates. *See Advisory*  
10 *Opinions 2004-41 (CUNA Mutual), 2002-12 (American Medical Security, Inc.) and 2000-*  
11 *36 (Andersen Consulting PAC).* Considering the intervening Agreement and the steps  
12 both organizations have taken after the Agreement to sever their operational and financial  
13 ties, this factor alone does not indicate current affiliation.

14           (J) *Whether the sponsoring organizations or committees have similar patterns*  
15 *of contributions or contributors which indicate a formal or ongoing*  
16 *relationship between the sponsoring organizations or committees.*  
17 *11 CFR 100.5(g)(4)(ii)(J) and 110.3(a)(3)(ii)(J).*

18  
19           Because the Union has not yet established an SSF, this factor cannot be applied.

20           d. *Conclusion*

21           The application of the factors discussed above, including the separation of the  
22 staffs, treasuries, and functions of the two organizations, the minimal overlap in  
23 governance, and the minimal direct overlap in membership, leads the Commission to  
24 conclude that the Union and the Association are not affiliated for purposes of the Act.  
25 Accordingly, if the Union were to establish an SSF, that political committee would not be  
26 affiliated with the Association's SSF.

1           This response constitutes an advisory opinion concerning the application of the Act  
2 and Commission regulations to the specific transaction or activity set forth in your request.  
3 See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the  
4 facts or assumptions presented and such facts or assumptions are material to a conclusion  
5 presented in this advisory opinion, then the requester may not rely on that conclusion as  
6 support for its proposed activity. All cited advisory opinions are available on the  
7 Commission's website at <http://saos.nictusa.com/saos/searchao>.

8   Sincerely,

9   Robert D. Lenhard  
10    Chairman

11