



A QUICK GUIDE TO BAIL FUNDS

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I. Introduction: Understanding Bail Funds

This guide is intended for activists and organizers who are interested in starting a bail fund. It provides an overview of the strategic options that they should consider before establishing their bail fund, including where to house the fund, options for tax recognition, and guidance on payment collection platforms. Additionally, in the face of increasing corporate and government pressure on activists, including bail funds, this guide provides a quick summary of the potential legal risks associated with running a bail fund.

We start with a brief history of bail funds in the United States, then discuss the initial questions to consider when establishing a fund. We then touch on the various options for money collection and tax registration and considers the legal risks involved with running a bail fund. At the end of this guide is a list of resources which may provide useful information for organizations considering starting a bail fund.

II. History of Bail Funds

There are two primary types of bail funds: (1) private funds to release activists arrested during civil disobedience, and (2) public-private partnerships to reduce overcrowding in prisons and jail¹. During the civil rights movement, hundreds of funds were established to be used as one-time bailouts for protesters across the South. Some of these funds were linked to pre-existing organizations, while others were established independently.² By linking funds to pre-existing organizations, people could easily correlate the fund with the campaign goals of the parent organization. For example, the Mississippi Bail Fund was established in conjunction with the Student Non-Violent Coordinating Committee (SNCC).³ Bail funds can also be established collaboratively by multiple organizations. For example, in 1965, the Congress of Racial Equality (CORE) and the National Association for the Advancement of Colored People (NAACP) created a temporary fund for protesters in Springfield, Massachusetts.⁴

Today, bail funds exist across movements and are hosted by both organizations and private individuals. This has raised new questions to consider when establishing a bail fund: How can funds be flexible enough to meet support needs while maintaining sufficient accountability? What are the benefits and drawbacks of hosting a fund at an existing organization? What are the legal risks of establishing a bail fund?

¹ Robin Steinberg et al., *Freedom Should Be Free: A Brief History of Bail Funds in the United States*, UCLA Criminal Justice L. Rev. 2018.

² National Bail Fund Network, *Community Bail Funds as an Organizing Tool*.
<https://www.communityjusticeexchange.org/en/resources-all/community-bail-funds-as-an-organizing-tool-a-primer-for-exploring-the-tactic>.

³ Robin Steinberg, et al., *Freedom Should Be Free: A Brief History of Bail Funds in the United States*, UCLA Criminal Justice L. Rev. 2018, at 86.

⁴ *Id.* at 87.

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III. Questions to Consider when Establishing a Bail Fund:⁵

1. Where will the bail fund live? Will it be a separate organization or a project of an already established organization?
 - How does the organizational structure/home relate to the bail fund's vision?
 - How will the bail fund's structure dictate staffing? Will a host organization/coalition provide staff? Will there be full-time staff or a coordinated volunteer structure? How will staff be compensated?
 - What platform(s) will be used to collect money? What are the risks associated with them?
 - What kind of bank account will hold the fund's money? Whose account will it be?
2. What resources and plans will the fund implement to mitigate liability risk? How might a bail fund's actions affect eligibility for legal representation (including eligibility for a public defender), bond assignment, and restitution burdens?⁶
3. What are the governance principles of the bail fund?
 - Who is in charge of decisions related to fundraising and disbursement? How are people with decision-making power chosen?
 - Will money only be used to cover bail, or will it assist with related legal and support costs?
 - How can someone apply to use the fund's money? What standards are used to consider applications for bail money?
4. How, if at all, will the organizational structure be connected to campaigns around bail reform?
5. What will the relationship be to the commercial bail bond industry? Will the bail fund have to interact with the bail bond industry due to local or state laws or regulations?

⁵ More contextual and feasibility questions for bail fund organizers can be found in *Community Bail Funds as an Organizing Tool* compiled by the National Bail Fund Network. *Id.*

⁶ See National Bail Fund Network, Best Practices for Establishing a Legal Defense Fund (Oct. 2021), https://www.nlg.org/wp-content/uploads/2021/12/Best-Practices-Guide-for-Establishing-a-Legal-Defense-Fund_Updated-Version_2021-2.pdf (“Be aware that prosecutors and judges may (improperly) use the presence of a fund as justification to set higher money bail, remove court-appointed counsel, argue that someone is a ‘flight risk’ because of their access to funds, and/or impose higher restitution burdens during sentencing based upon the accused person’s ‘ability to pay.’ In some jurisdictions, funds have established bail assignment agreements or other documentation to protect individuals from this sort of action.”).

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IV. How to Open a Bail Fund

A. Incorporated Funds

The procedures to start a bail fund vary according to state law; make sure to check local resources. For those establishing a new organization to run a fund, the general steps are:⁷

1. Register as a charity under state law;
2. Register as a nonprofit organization under federal tax laws;
3. Obtain a Charitable Bail Organization (CBO) license;
4. Obtain an individual bail bond agent license;
5. Establish procedures and processes for posting bail, although these procedures will vary widely by county and courthouse.

B. Unincorporated Funds

Bail funds can be established as unincorporated associations (see the Incorporation Banking & Funds section for a discussion of how incorporation decisions impact tax and banking options). Individual members of an unincorporated association can be held liable for the association's actions.⁸ An unincorporated nonprofit association is an informal group of two or more individuals who join together for a not-for-profit purpose without creating a corporation, LLC, or other entity to do so. Creation of an unincorporated association does not depend on compliance with any statutory provision, and there are no fees applicable. Written rules or bylaws are not required. However, the following is recommended to carry on the affairs of the organization⁹:

1. A written statement of the purpose and common goals of the association;
2. Articles of association and bylaws to set out the method of operation and the designation of responsibilities of officers, as well as signing authority, to carry on the various functions of the organization;
3. A budget with funding requirements;
4. Retention of accurate books and records.

⁷ *Establishing A Charitable Bail Fund in New York State: a Step-by Step Guide*, The Bronx Freedom Fund, <https://perma.cc/RBV3-8ME8>

⁸ *Unincorporated Nonprofit Associations: Opportunities and Risks*, Lawyers Alliance for New York, https://lawyersalliance.org/userFiles/uploads/legal_alerts/Unincorporated_Nonprofit_Associations_FAQs_COVID_April_2020.pdf.

⁹ *Id.*, at 1.

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V. Resources for Bail Fund Organizers

*The Bronx Freedom Fund Licensing Guide: Step-by-step guide for bail fund organizers to register as a 501(c)(3) organization under federal law, register as a charity under New York law, and apply for relevant certificates (New York-specific).*¹⁰

Community Bail Funds as An Organizing Tool: A Primer for Exploring the Tactics: This guide is divided into two parts: Part I provides questions to explore before starting a bail fund; Part II asks logistical & technical feasibility questions.¹¹

NLG Best Practices for Establishing Bail Funds: This guide has helpful information for both establishing an independent bail fund and connecting with local host organizations.¹²

VI. Incorporation, Banking, & Fund Collection

Incorporation: Tax liability and banking options for bail funds depend on their status as incorporated entities. For most bail funds, the preferred corporate entity is the non-profit corporation. Nonprofits are governed by state-specific laws that impose various restrictions on form and activity. While there are some requirements governing non-profit corporations as state entities (such as requirements for governing boards, annual reporting, restrictions on political activity, etc.), more serious restrictions are imposed on non-profits that choose to apply for federal tax exemption, especially 501(c)(3) tax exemption (which exempts the organization from paying income tax and allows donors to claim a tax deduction). But establishing a basic non-profit entity is fairly straightforward and inexpensive (\$75 in New York).¹³ Incorporation carries some risks; a non-profit must abide by state law or risk liability. However, incorporation also confers substantial benefits – for instance, in addition to eligibility for tax exemption, incorporating as a nonprofit can shield (albeit not completely) members of the organization from tortious and tax liability.¹⁴

Incorporated Banking: A number of legal entities – including for-profit corporations, nonprofit corporations, cooperative corporations, and LLCs – are eligible to establish bank accounts with most banks and credit unions. To do so, the entity must furnish its official name, Employer Identification Number (EIN), and relevant legal incorporation documents (such as a Certificate

¹⁰ *Establishing A Charitable Bail Fund in New York State: a Step-by Step Guide*, The Bronx Freedom Fund, <https://perma.cc/RBV3-8ME8>

¹¹ https://bigdoorbrigade.com/wp-content/uploads/2019/08/CJE_NBFN_Community-Bail-Funds-as-an-Organizing-Tool.pdf

¹² <https://www.nlg.org/wp-content/uploads/2018/07/NBFN-NLG-Legal-Defense-Fund-Guide-FINAL.pdf>

¹³ Michael Haber, *Legal Issues in Mutual Aid Operations: A Preliminary Guide*, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3622736.

¹⁴ *Establishing A Charitable Bail Fund in New York State: a Step-by Step Guide*, The Bronx Freedom Fund, <https://perma.cc/RBV3-8ME8>

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of Incorporation, Articles of Organization, or a comparable document). Additionally, the entity should have resolutions in place specifying the individuals authorized to manage and access the bank account.¹⁵

Unincorporated Banking: If your bail fund organization isn't incorporated, it can establish a bank account in the group's name rather than relying on individual members' personal accounts. The unincorporated organization should have a name, an Employer Identification Number (EIN), and a formal resolution that designates specific individuals with access to the bank account. Some banks offer templates for such resolutions that unincorporated associations can utilize. While the specific requirements may vary slightly among different banks or credit unions, many of them permit unincorporated groups to open accounts, provided that the group's members are primarily located within a single state or city.¹⁶

VII. Platforms for Fund Collection

Be wary of using Go Fund Me (which may not allow funds to be used toward bail relief for criminal charges) or Paypal (which will freeze large amounts). Also be aware that it can take several days to transfer money from crowdfunding platforms and "personal" payment apps like CashApp or Venmo into a bank account from which it can be withdrawn and used.¹⁷

A widely used fundraising option by bail funds is a "Fundraisers for charity" account by PayPal, an account type specialized in fundraising.¹⁸ PayPal covers transaction fees for donations to "Fundraisers for charity" accounts.¹⁹ However, there may still be a delay to withdraw money, as transfer to a bank account can take 2 to 3 business days. Fundrazr is another alternative option that allows raising legal fees, but it's less well known to the public.²⁰ Bail fund organizers can launch a social media campaign and link it to their chosen platforms.

VIII. Tax Risks

One important strategic consideration when establishing a bail fund is the decision whether to do so within a pre-existing 501(c)(3). If the bail fund is hosted through a 501(c)(3), it

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Community Bail Funds as an Organizing Tool: A Primer for Exploring the Tactic*, National Bail Fund Network, <https://www.communityjusticeexchange.org/en/resources-all/community-bail-funds-as-an-organizing-tool-a-primer-for-exploring-the-tactic>.

¹⁸ *Crowd Funding for Bail Money or Bail Bonds*, Justice Bail Bonds, <https://www.justicebailbonds.com/blog/588-crowd-funding-for-bail-money-or-bail-bonds>.

¹⁹ *Pay Pal Fundraisers Terms and Conditions*, Pay Pal, https://www.paypal.com/us/legalhub/pp-fundraisers-tnc?locale.x=en_US.

²⁰ *Crowd Funding for Bail Money or Bail Bonds*.

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can enjoy significant tax advantages. Funds that pass through the 501(c)(3) are exempt from taxation. A bail fund must adhere to IRS regulations to maintain its tax-exempt status. Several factors could potentially jeopardize a bail fund's 501(c)(3) status:

Private Benefit/Inurement: If the organization's activities result in substantial private benefits for individuals or groups rather than serving a charitable purpose, it could violate the private benefit/inurement rule.

Lobbying: While lobbying is permissible to some extent for 501(c)(3) organizations, excessive lobbying activities that constitute a substantial part of the organization's overall activities might pose a risk.

Political Campaign Activity/Electioneering: Engaging in political campaign activities, including endorsing or opposing candidates for elected office, can lead to the loss of tax-exempt status for a 501(c)(3) organization.

Unrelated Business Income (UBI): If the bail fund engages in a trade or business that is not substantially related to its exempt purpose, and if the income generated from such activities is excessive, it may risk losing its tax-exempt status.

Operation in Accord with Stated Exempt Purpose: If the bail fund deviates significantly from its stated charitable purpose as outlined in its tax-exempt application, without notifying the IRS of substantial changes, it could be at risk.

Key Considerations:

- A. **Special Filing Requirements to Retain 501(c)(3) Status - Form 990:** Most exempt organizations must file returns and reports at some time during (or following the close of) their accounting period. If an organization fails to meet its annual reporting requirement for three consecutive years, it will automatically lose its tax-exempt status. To regain its exempt status, an organization will have to reapply for recognition as a tax-exempt organization or seek relief under special procedures.²¹ As a result of the 2006 Pension Protection Act, the IRS automatically revokes the 501(c)(3) tax-exempt status of any nonprofit that fails to file Form 990 for three consecutive years. Notice CP120A is the letter the nonprofit receives that informs them that this has happened. This auto-revocation of 501(c)(3) status will usually happen without warning and is not appealable.²²

²¹ <https://www.irs.gov/pub/irs-pdf/p4077.pdf>.

²² <https://www.501c3.org/501c3-status-revoked/>

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- B. The IRS has a process in place that allows nonprofits to regain their 501(c)(3) status. This guide explores four steps your nonprofit should follow to do this:
1. Publicly Address Your 501(c)(3) Status Revocation
 2. Do Not File New Articles of Incorporation
 3. Apply for 501(c)(3) Status Reinstatement
 4. Don't Risk Having Your 501(c)(3) Status Revoked Again²³

IX. SLAPP Suits

A. What Is a SLAPP suit?

SLAPP is an acronym for a Strategic Lawsuit Against Public Participation. At its most basic, a SLAPP suit is a civil complaint or counterclaim filed by a private actor – often wealthy individuals or business interests – against people who speak out on issues of public interest or concern.

One of the key characteristics of a SLAPP suit is that the lawsuit is not necessarily designed to achieve a favorable verdict. Instead, it is designed to intimidate the target in order to discourage them and others from speaking out on an issue of public importance.

In addition to engendering fear and intimidation, the party initiating the suit often seeks to bleed the victim of resources and produce a chilling effect, not only on the victim's expression of First Amendment rights but also on those who may consider speaking out on the issue in the future. In essence, SLAPPs are designed to discourage public discussion by using our legal system to choke the exercise of free speech.²⁴

B. How SLAPP Suits Relate to Bail Funds

As SLAPP suits become more common, bail funds may become targets. Although such cases are currently unusual, recent developments are cause for concern. In response to the protests against the Dakota Access Pipeline at Standing Rock, the pipeline's owners brought a \$900 million racketeering case against individuals and NGOs, including Greenpeace.²⁵ Although Greenpeace does not have a bail fund within its structure, it actively facilitated connections with local bail funds.²⁶ More recently, three leaders of a bail fund in Atlanta were charged with financial crimes.²⁷ While not a SLAPP suit, technically speaking, the case may illustrate the beginning of a trend in which bail funds are becoming targets of corporate-backed efforts to silence protest.

²³ Id.

²⁴ *What is a SLAPP Suit?*, ACLU of Ohio, <https://www.acluohio.org/en/what-slapp-suit>.

²⁵ Katie Redford, *Lawsuits Have Become the Weapon of Choice Against Activists*, The Nation, <https://www.thenation.com/article/activism/slapp-legal-intimidation-activists/>

²⁶ <https://www.greenpeace.org/usa/toolkits/protest-safety-tips-from-greenpeace/>

²⁷ In May 2023, three board members of the Atlanta Solidarity Fund – which previously provided bail and other support to activists protesting a sprawling proposed police training facility in Atlanta – were arrested by heavily

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C. Risk Management Strategies

1. Keep doing your work.
2. Speak out to support individuals targeted by SLAPP suits.
3. Follow all legal requirements applicable to your organization.
4. Connect with local legal support groups.
5. Know your state laws. Approximately 30 states have introduced legislation to protect individuals and groups against SLAPPs. However, the protection these laws offer activists varies. Most laws are designed to protect journalists or speech activities by activists, and, thus, bail funds may or may not fall within their reach.²⁸ The New York statute, for example, defines protected activity as “any communication in a place open to the public or a public forum in connection with an issue of public interest” or “any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest” N.Y. Civ. Rights Law § 76-a(1)(a)(1)-(2) (McKinney).

X. Other Considerations

A. Liability Waiver and Insurance

Groups who advise, organize, or provide bail to activists might consider requesting that volunteers and participants sign a liability waiver as a precautionary measure to shield the group’s leaders and board members from financial or legal liability in the event of injury to a participant. These groups should also consider purchasing directors and officers liability insurance, along with general liability insurance if appropriate, to further safeguard the group and its members.

B. Data Security

Personal data can be misused in a variety of ways. One strategy for protecting activists and groups is to collect as little data as possible, be mindful about granting permissions, use encryption when possible, and be strategic in granting access to sensitive data. *Keeping Each Other Safe When Virtually Organizing Mutual Aid* (full citation in resource list below) is a useful

armed officers and were indicted on charity fraud and money laundering charges. Jack Crosbie, The (Other) Georgia RICO Case That Could Threaten the Right to Protest Nationwide, *Rolling Stone* (Sept. 6, 2023), <https://www.rollingstone.com/politics/politics-features/cop-city-rico-charges-dangerous-precedent-1234819244/>. Magistrate Judge Altman, who presided over the bail hearing, “expressed some skepticism about the state’s case,” reinforcing the defendants’ claims that the arrests are politically, not legally, motivated. Rick Rojas & Sean Keenan, Georgia Officials Target Bail Fund in Crackdown on ‘Cop City’ Protests, *The New York Times* (June 2, 2023), <https://www.nytimes.com/2023/06/02/us/cop-city-atlanta-protests.html>.

²⁸ Austin Vinings & Sarah Matthews, *Overview of Anti-SLAPP Laws*, Reporter Committee for Freedom of the Press, <https://www.rcfp.org/introduction-anti-slapp-guide>.



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starting point for questions involving data security. It is important to keep in mind that many security practices are effective only when there is trust between the humans relying on them to keep each other safe. For more information on this subject, see *Security Culture: Building Relationships of Trust and Care* (full citation below).

XI. Resources

1. Austin Vining & Sarah Mathews, *Anti-SLAPP Law Introduction*. The Reporters Committee for Freedom of the Press.
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4. Jia Talentino, *Where Bail Funds Go from Here*. The New Yorker. June 23, 2020.
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13. *What is a SLAPP Suit?*, ACLU of Ohio, <https://www.acluohio.org/en/what-slapp-suit>.
14. Zac Chapman and Julian Rose, *Protecting Solidarity: Countering Attacks on Mutual Aid Funds*, Nonprofit Quarterly, August 1, 2023. <https://nonprofitquarterly.org/protecting-solidarity-countering-attacks-on-mutual-aid-funds/>
15. *Security Culture: Building Relationships of Trust and Care*, Climate Defense Project (July 2023), https://climatedefenseproject.org/wp-content/uploads/2023/07/7.5.23_Digital_Security-Culture-Zine.pdf.