

# NONPROFIT & SOCIAL SERVICE ORGANIZATIONS

Desk Reference Manual

(Third Edition)

Prepared by:



**Sobel & Co., LLC**

CERTIFIED PUBLIC ACCOUNTANTS  
AND CONSULTANTS



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## Table of Contents

Welcome To Our Readers	2
Structure of Desk Reference Manual	2
Emerging and Continuing Issues and Trends for Nonprofits	3
Defining Nonprofit Organizations	7
Proposed Financial Accounting/Reporting Standards That May Impact Nonprofit Organizations	9
Financial Reporting for Nonprofit and Social Service Organizations	13
Non-Cash Contributions	20
Art and Science of Fundraising	24
Financing for Nonprofit Organizations	26
IRS Form 990 Continues to Pose Challenges	29
Nonprofit Tax Issues	32
Payroll and Nonprofit Tax Reporting	40
Legal Issues in Establishing Nonprofit Organizations	47
An Overview of Nonprofit Board Responsibilities	54
Fraud and the Responsibilities of the Audit Committee: An Overview	61
Insurance and Risk Management	64
Forms to be Filed	69
Helpful Web Sites	70
Disclaimer	73
Educational Certification Programs	74
Information About the Authors and Sponsors	75

## **Welcome To Our Readers**

It is our pleasure to publish this Third Edition of the Sobel & Co. Desk Reference Manual for the Nonprofit and Social Services sector. Much like our previous printings, the goal for this manual is to provide you with access to the resources and information you need to run your organization most effectively and efficiently. As with our previous editions, we have endeavored to fill these pages with high quality, meaningful and relevant information that provides you with a competitive edge. The current version includes updated information and improved content that will keep you abreast of issues and evolving trends impacting your organization.

Please share the manual with your staff, board members and other leaders of your organization. Feel free to call us if you would like additional copies and, as always, let us know what further information you would like to see included in future editions. You can also download a copy from our website <http://sobel-cpa.com/resources/nonprofit-resources>.

## **Structure of Desk Reference Manual**

In order to maintain their nonprofit status and continue to help others, all nonprofit organizations continuously face unique financial, legal, and tax concerns.

With that in mind, The Desk Reference Manual For Nonprofit and Social Service Organizations outlines the basic financial, accounting, tax compliance, organizational and legal issues regarding the ongoing operations of nonprofit and social service organizations and provides resources to address these concerns. Critical issues such as obtaining federal recognition of nonprofit status, charitable solicitation registration and basic financial statements, including statement of activities, statement of financial position, cash flows and functional expenses, are addressed. A complete overview of nonprofit board responsibilities, financing requirements, wealth management issues, fundraising and insurance matters are also discussed. In addition, taxation and payroll requirements for nonprofit organizations (with or without employees) are included, as well as an information directory of the various agencies involved in the nonprofit sector in New Jersey.

**Emerging and Continuing Issues and Trends for Nonprofits**  
**By Linda Czipo, Executive Director**  
**Center for Nonprofits**

Nonprofit organizations play a critical role in ensuring a strong social service and civic infrastructure, and are an indispensable part of a vibrant quality of life.

New Jersey is home to nearly 30,000 501(c)(3) organizations ranging in size from small, neighborhood all-volunteer groups to large, complex institutions. Whether providing mentoring to youth, meals to homebound seniors, medical care, disaster relief, substance abuse prevention, education, foreclosure assistance, artistic and cultural enrichment, spiritual fulfillment or preserving our natural resources, nonprofits fulfill a vital public function that would leave a gaping void were they not present.

Not only do nonprofits provide essential programs and services in our communities, but they are also an important part of our economy. IRS data show that New Jersey's nonprofits combined spend more than \$37 billion annually, most of it in the Garden State. New Jersey nonprofits employ more than 304,000 people – nearly 10% of the state's private workforce and more than many major industries including transportation, public utilities, construction, banking and insurance.

Nonprofits purchase goods and services from local businesses; pay payroll, utilities, telecommunications and related taxes; they help to spur economic activity and tourism and their employees live, pay taxes and patronize local merchants. Additionally, nonprofits provide the education, training, skill building and human service activities that make it possible for people to find and keep their jobs, or to forge new career paths.

There is a clear connection between a thriving nonprofit community and a strong New Jersey. We all have a stake in ensuring that organizations are robust and effective. Following are just some of the many existing and emerging trends that will have a dramatic impact on the landscape in the coming years, creating new challenges and opportunities for nonprofits.

## **Keeping Pace With Rising Demand**

Annual surveys conducted nationally by the Nonprofit Finance Fund and in New Jersey by the Center for Nonprofits consistently show that demand for nonprofit services is skyrocketing every year. Equally alarming is the significant proportion of nonprofits indicating that they are not able to meet the increased demand. For many, funding from major sources is still below pre-recession levels, leaving a gap between the resources available and those needed. The implications for our ability to address broad-based societal problems are significant.

## **Heightened Scrutiny**

The growth of the sector, its increased visibility and importance, isolated scandals involving specific organizations, and technological advances have all contributed to more intense scrutiny of the nonprofit community. Although this trend is not new, nonprofit finances, operations, governance, compensation and fundraising practices, and ethics are under the microscope as never before. Additionally, confusion about the distinctions between different types of exempt organizations (charities vs. 501(c)(4)s, trade associations, section 527 organizations to name a few) can exacerbate misconceptions, fueling mistrust and unrealistic expectations. Accountability, transparency and the highest ethical standards must, of course, be the norm for all responsible nonprofits. However, care also needs to be taken that policies proposed in the name of accountability don't cross the line into excessively intrusive or burdensome requirements that would undermine nonprofits' independence, needlessly divert scarce resources, or impede the ability to execute their missions.

## **Metrics, Evaluation, Impact**

The days of gauging nonprofit effectiveness based solely on simple outputs (numbers of meals served, nights of shelter provided, etc.) are long behind us. Nonprofits, funders and other stakeholders are focusing more intently on both incremental indicators of progress and the end result of the programs being provided – the ultimate impact, whether in terms of changed behaviors, improved health outcomes, long-term job retention, and the like. Beyond individual organization focus is a growing attention to “collective impact” – marshaling the talents and resources across sectors and stakeholders to analyze and address large-scale community/societal needs. Defining meaningful impact measures in ways that are sensible, appropriate and feasible for different types of organizations and activities will continue to be vital in the coming years, and organizations need to be involved in shaping these discussions.

## **Mergers and Strategic Partnerships**

Mergers, consolidations and strategic realignments are on the rise in the nonprofit sector. A number of high-profile organizations have executed large-scale mergers in the past five years. But many smaller organizations are also consolidating, and a growing number of organizations indicate a willingness to explore strategic restructuring. Shared space arrangements, shared back-office and myriad programmatic and fundraising collaborations are becoming more common. Some of this is a function of creative problem-solving – a hallmark of the nonprofit community – but some is also being driven by external forces and financial pressures, as nonprofits continue to explore new ways to leverage human and financial resources.

## **Nonprofits Targeted as Revenue Sources**

As government budgets at all levels become tighter, governments have not only scaled back on funding for nonprofit programs, but they have also looked increasingly at nonprofits as potential sources of revenue to close their budget gaps. Efforts to chip away at the tax deductibility of charitable gifts; challenges to individual nonprofit property tax exemptions; efforts to impose fees and payments in lieu of taxes; and discussions about revamping the scope of federal tax exemptions are just a few examples. These efforts are likely to continue and intensify over the coming years. Nonprofits will need to be prepared to advocate about the implications of these policies on their ability to serve community, and to engage in thoughtful exploration of broad-based solutions to our nation’s fiscal problems.

## **Hybrid Business Models and New Funding Structures**

Over time, the lines between nonprofits, for-profits and government have become more blurred and the different entities less distinct. Although nonprofit involvement in social enterprise is not new, greater attention is being paid to new hybrid business models such as benefit corporations (recognized in New Jersey as of 2011) or low-profit limited liability corporations (L3C, a structure currently recognized in other states but not New Jersey) as agents for change.

Additionally, new funding models such as pay for success, sometimes called pay for performance or social impact bonds are attracting attention as alternatives to traditional government funding models. A pay for success model ties funding to the achievement of certain outcomes, often with an outside party providing the payment for the program to a service provider, and the government repaying the investor only if the agreed-upon outcomes are achieved. In such an arrangement, much of the risk is transferred from the government funder to the outside investor or to the entity performing the services. While some pilot programs have been launched in other parts of the country, the broad-based applicability of this model is largely untested, and it remains somewhat controversial.

## **Full Partners with Business and Government**

Nonprofits are indispensable partners in providing solutions to community problems and in strengthening the social and economic fabric. The relationships between nonprofits and government have been undergoing a fundamental shift in recent years. Given governments' increasing reliance on nonprofits for fundamental programs and services, efforts to reform and improve contracting are taking on an added urgency. Programmatic, public policy and funding relationships that embrace a respectful partnership are the key to a strong quality of life for the people of our state.

## **The Importance of Infrastructure**

Especially during the most recent fiscal crisis, the importance of investing in nonprofit infrastructure – professional education, skill building, planning, financial systems, research & development, and other elements of capacity – has become undeniably clear. Research has shown that organizations that skimp on these vital items are generally less effective in key areas than those that are committed to strengthening these support structures. Indeed, national and New Jersey surveys confirm that infrastructure and capacity building are among the top concerns of nonprofits today for the well-being of individual organizations as well as for the nonprofit community at large. In this environment, nonprofits continue to work to fortify their own structures, expand their outreach and communications efforts, and to strengthen their collaborations with nonprofit, for-profit and government partners, in order to meet the needs of their communities. This ability to adapt and persevere is a hallmark of a vibrant sector that is essential to us all.

## Defining “Nonprofit Organizations”

Nonprofit organizations come in many forms, from the purely volunteer Parent Teacher’s Association serving school children to the Pro Golfers Association to the American Lung Association. An understanding of the differences amongst these organizations can be helpful to understanding the world of nonprofits.

**Nonprofit.** “Nonprofit” is a concept of state law, which means that an organization may not pay dividends or otherwise pass any surplus revenue, or “profits,” from the enterprise on to shareholders, members, or other individuals. Although a nonprofit may pay reasonable compensation for services actually rendered to it, in general, any surplus generated by the organization must stay within the organization and be used for its stated mission or purpose. A nonprofit corporation is not “owned” by anyone. It may be controlled by individuals or other entities, but those who control the nonprofit do not have an ownership interest in the organization.

**Tax Exempt.** Most, but not all, nonprofit organizations are exempt from paying federal income tax on their earnings. Section 501(c) of the Internal Revenue Code (the “Tax Code”) now spells out 27 separate categories of exempt organizations. These categories include Section 501(c)(2) title holding companies, Section 501 (c)(4) civic associations, Section 501(c)(5) agricultural or labor organizations, Section 501 (c)(6) business leagues, professional and trade associations (including the Association of Management Consulting Firms and the New Jersey Psychological Association), and Section 501(c)(7) social clubs. The largest category, and the one most people usually think of when they hear the terms “nonprofit” or “tax exempt,” is Section 501(c)(3) which exempts “charitable” organizations (including the volunteer soup kitchen).

**Charities.** Under the Tax Code definition, a Section 501(c)(3) charitable organization is one which is “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.” In addition, no part of the net earnings may inure to the benefit of any private shareholder or individual, no substantial part of the activities may consist of carrying on propaganda, or otherwise attempting to influence legislation (“lobbying”), and the organization may not participate in any political campaign for or against any candidate for public office (“electioneering”).

The critical distinguishing feature of charities, as opposed to almost all other types of federally exempt organizations, is that individuals and corporations may make charitable contributions to charitable organizations and claim a charitable contribution deduction on their own federal income tax returns.

**Public Charities and Private Foundations.** Section 501(c)(3) charities are further subdivided under Section 501(a) of the Tax Code between those that are considered publicly supported, such as a church, hospital, school, United Way or a nursing home, and those that are considered private foundations because essentially all of their income has come from a single individual, family, or corporation and income on their investments. Private foundations are subject to more stringent regulations.

**State Tax Exemption.** State tax exemption is an entirely separate issue from the federal exemption that usually defines nonprofits in the public mind. In New Jersey essentially any nonprofit corporation not conducted for personal profit is exempt from state income tax and corporate franchise taxes.

In addition, there are two other state taxes that can have a significant effect on the budget of a nonprofit organization. These are the sales tax and real estate tax. Charitable organizations may be exempt from paying sales tax on the goods and services they purchase and real estate tax on their real estate holdings if they meet the state law definition of a charity. New Jersey generally exempts organizations of the kind traditionally deemed to be charitable under Section 501(c)(3). Nonprofit organizations must apply for exemption from paying or collecting sales tax to the Division of Taxation by completing Form REG-1E. While nonprofit organizations may be exempt from real estate taxes, more organizations are agreeing to payments in lieu of taxes (PILOT). Such PILOT payments are made to local tax authorities to help offset the impact upon local services funded by town residents.

## Proposed Financial Accounting/Reporting Standards That May Impact Nonprofit Organizations

As this Desk Reference Manual goes to press there are a number of proposed changes that nonprofits should be aware of. We will keep you informed of these proposed changes as they occur. There are no current implementation dates for any of these proposed items. At present they are merely proposals and may never come to fruition.

### U.S. Office of Management and Budget (OMB)

The federal government spends more than \$600 billion annually in the form of grants and cooperative agreements. OMB and the federal agencies have been talking for some time about reforming grant policies to increase the efficiency and effectiveness of federal programs, as well as to eliminate unnecessary and duplicative requirements. They also will focus on areas that emphasize achieving better outcomes at a lower cost. OMB's issuance of the Proposed Guidance is the culmination of the information gathering process that began when OMB issued the Advance Notice on this topic in early 2012.

The Proposed Guidance document is over 200 pages long, the following describes some of the key areas of change covered in the Proposed Guidance:

- **Single Audit A-133 Threshold** – The threshold of federal awards expended in which a single/A-133 audit is required would increase from \$500,000 to \$750,000 or even as high as \$1,000,000. Entities that expend less than \$750,000 must make their records available for review or audit by the appropriate officials of the Federal agency pass-through entity and the Government Accountability Office, but are not required to undergo a single audit under the proposed changes.
- **Program Determination** – The threshold used to identify a federal program as Type A increased from \$300,000 to \$500,000. In addition, the number of high-risk Type B programs that must be tested as major programs was reduced from 50% of the number of low-risk Type A programs to 25%. Small Type B programs would be considered those that are 25% of the Type A/B program threshold.
- **Minimum Coverage** – The percentage of coverage required in a single audit would be reduced from the current 50% (normal) and 25% (low-risk auditees) to 40% (normal) and 20% (low-risk auditees).
- **Criteria for Low-Risk Auditee Status** – The criteria would include a data collection form submission within the required timeframe as a criterion and adds a criterion that the auditor did not report a substantial doubt about the auditee's ability to continue as a going concern and removes the previous options for waivers.
- **Types of Compliance Requirements to be Tested** – A reduction in the potential compliance requirements that must be tested as part of a single audit from the current 14 to seven.
- **Findings** – An increase in the questioned cost threshold for reporting from \$10,000 to \$25,000. Additionally, more detail will be required to be reported in auditor findings regarding questioned costs.
- **Related Circulars and Guidance** – Streamlining of the eight existing OMB Circulars into one document including Circular A-133, the various Cost Principles and administrative requirements.

## Proposed Changes to the Data Collection Form

OMB also released proposed changes to the Data Collection Form (DCF or the Form) and the related instructions to the Form. The DCF summarizes the results of a single audit and is prepared jointly by the auditor and auditee. The new form and instructions will be applicable for audit periods ending in 2013, 2014, and 2015.

Nonprofit organizations will find that the proposed changes to the DCF are more substantial than the last several revisions made to the Form by OMB. For example, the proposal calls for a new section of the Form that will require significant additional information about the findings reported by the auditors. Additionally auditors will have to include their Employer Identification Number (EIN) on the DCF.

## Financial Accounting Standards Board (FASB) Accounting/Reporting Standards That May Impact Nonprofit Organizations

FASB's Nonprofit Advisory Committee (NAC) has established three working groups to study ways for FASB or others to improve financial reporting for nonprofit entities.

- **Reporting Financial Performance** - This group will consider how to improve the reporting of financial performance via the statement of activities – including the need for and definition of an operating metric, a separate operating statement, and net asset classification – and how changes in net assets are presented (the degree of flexibility of presentation that should be afforded). The subgroup also will consider how to improve the cash flow statement, including its interrelationship with the statement of activities.
- **“Telling the Story”** - This group will consider potential improvements beyond the statement of activities and statements of cash flows – for example, a management, discussion and analysis type of standard, segment reporting, a statement of functional expenses, and summarized financial statements.
- **Liquidity/Financial Health** - This group will consider potential improvements that could be made to better reflect liquidity or other key measures of financial health, on the statement of financial position and/or the notes to the financial statements.

## **Nonprofit Financial Statements Head for Possible Overhaul**

The FASB wants to give donors and watchdogs more information regarding how much access charities, universities, and other nonprofit organizations have to their organization's money.

FASB discussed a proposal that requires nonprofit organizations to report their assets in two categories – restricted and unrestricted – and include more information in their financial statement footnotes.

The proposal would change current U.S. Generally Accepted Accounting Principles (GAAP), which requires organizations to report the amount of their net assets in three categories: unrestricted, temporarily restricted, or restricted by donor limitations, i.e., permanently restricted.

“One of the concerns raised about collapsing the restricted classes into two is that we might lose some of the information, but it can be conveyed through the footnotes,” FASB said. “It might be more granular and improved information through the footnotes than what we currently do through the financial statements.”

Access to funds is a key aspect of financial reporting for nonprofit organizations. For example, museum enthusiasts may donate money to fund a new exhibit, while others may earmark donations for a new roof or building wing. Others may give money to a general fund that can be used at a museum's discretion. This means that the museum may have a certain amount of funds on hand, but it can only use the money for specific purposes.

Changing how nonprofit organizations report their assets on their statements of financial position is part of a broader effort to improve financial reporting for these organizations.

The FASB's Nonprofit Advisory Council has supported the move and identified several areas in which nonprofit reports could be improved, including how information about an organization's ability to get funding is presented on the statement of financial position. Donors, regulators, and financial backers also want clearer information about an organization's financial performance and more details in the financial statement footnotes.

## **Possible Changes in Accounting for Leases**

A new proposal on accounting for leases represents a major change in accounting by requiring many vastly larger amounts of assets and liabilities than they do now.

Under current rules, organizations are generally able to classify virtually all leases as operating leases and keep them off their statements of financial position, something that regulators and accounting critics have long criticized. Some airlines, for example, lease all their airplanes and show no airplane assets on their balance sheets and no liabilities for the money they are committed to pay for those planes in the future.

Under the proposal, an airline entering into a lease for a plane would show an asset of the right to use the plane and an equal liability based on the current value of the lease payments it has promised to make. That accounting would be similar to what it would show had it borrowed money to buy the plane.

The proposal is responsive to the widespread view of investors that leases are liabilities that belong on the statement of financial position. There would probably be a considerable delay in making the new rules effective, probably until 2017, to give entities time to comply and, in some cases, to renegotiate loan agreements that put limits on borrowing – limits that could appear to be violated if leases are put on the statement of financial position.

In addition to making statements of financial position more comprehensive, the proposed rule would also change statements of activities for many organizations. Currently, an organization that leased a piece of machinery for \$1,000 a year for five years would show a \$1,000 expense each year.

Under the proposal, that organization would show a larger expense in early years and a smaller one in later years. That is because the accounting would be similar to what would be shown if the company had borrowed money to buy the asset, paying off the loan in equal payments over five years. In early years, the interest expense would be higher than in later ones.

The proposed lease accounting standard generated hundreds of comment letters to the Accounting Boards and therefore organizations should remain cautious to the changes ahead in lease accounting.

# Financial Reporting for Nonprofit and Social Service Organizations

## *The Basic Financial Statements*

The key objectives for financial reporting by nonprofit organizations relate to the ability of nonprofit organizations to provide services. Information in the financial statements should help readers:

- Evaluate the nonprofit organization's services and its ability to continue to provide these services.
- Evaluate management's administration and other aspects of its performance.
- Understand the organization's resources and obligations.
- Judge the performance of the organization by evaluating the changes in its net resources.
- Evaluate the organization's liquidity and use of cash.
- Understand the financial information presented through explanations and interpretations of the data in the financial statements.

Financial reporting should be sensitive to the needs of the users. Users of nonprofit financial statements include funders, donors, grantees, creditors, regulatory agencies, vendors, management and board members. Organizations receiving funding from governmental sources (federal, state or local sources) either directly or indirectly (subrecipient) may be subject to the OMB Circular A-133 standards or to certain other "agreed upon procedures" determined by the funding agency. For these reasons, management of nonprofit organizations has a fiduciary responsibility to provide accurate, reliable financial information.

Changes in financial reporting standards and principles require nonprofit organizations to report contributions on the accrual basis of accounting; investments at fair value and financial information based on net assets classified solely on the basis of donor restrictions. These changes are intended to make the financial statements consistent and similar to "commercial type" financial statements and more readable by the financial community and public.

In addition, accounting principles generally accepted in the United States of America now require nonprofit organizations to account for derivative and hedging transactions and activities. They must also report assets received from donors with instructions to disburse these assets to a specific beneficiary as a liability instead of revenue unless the nonprofit organization has the ability to redirect the donation to another beneficiary (variance power).

Financial statements prepared in accordance with generally accepted accounting principles typically follow rules promulgated by the American Institute of Certified Public Accountants. These standards have resulted in several new names for financial statements; however, no particular statement titles or formats are required or prohibited.

<b><u>Net Asset Model</u></b>	<b><u>Fund Accounting Model</u></b>
Statement of Financial Position	Balance Sheet
Statement of Activities	Statement of Support, Revenue and Expenses and Changes in Fund Balances
Statement of Cash Flows	Statement of Cash Flows
Statement of Functional Expenses	Statement of Functional Expenses

The reporting standard requires that certain totals and disclosures be presented relating primarily to net assets, liabilities and changes in net asset totals. There is flexibility in presenting certain information either in notes to the financial statements or in the statements themselves.

Nonprofit organizations' financial statements should include consolidation of for-profit entities in accordance with the equity method of accounting and other nonprofit organization entities in which the organization has voting control and economic interest, if other than temporary. If consolidation of support or affiliated nonprofit organizations is not required, disclosure of the organization, nature of related party transactions and summarized financial information should be presented.

Nonprofit organizations' financial statements should be prepared on the accrual basis of accounting to more accurately report revenues and expenses.

**Statement of Financial Position**

The primary focus of the statement of financial position is on the liquidity and equity of the organization as a whole. The statement should provide relevant information about an organization's total assets, liabilities and net assets and about their relationship to each other. The statement should provide information regarding (a) the organization's ability to continue to provide services; (b) the interrelationship of the organization's assets and liabilities; and (c) the organization's liquidity and financial flexibility so it can respond to unexpected needs and opportunities.

One or more of the following can provide information about liquidity:

**Sequencing** - Assets are listed in order of their nearness to being converted into cash. Liabilities are listed in order of their maturity and expected use of cash resources.

**Classification** - Assets and liabilities are classified as either current or noncurrent in the statement of financial position.

**Disclosure** - Information regarding the liquidity of assets and liabilities, including any restrictions, is presented in the notes to the financial statements.

**Equity** - unrestricted, temporarily and permanently restricted net asset balances must be reported. These amounts may be segmented to provide further detail.

Temporarily restricted net assets represent net assets resulting from contributions and other inflows of assets whose use by the organization is limited by donor-imposed restrictions that either expire by passage of time or can be fulfilled and removed by actions of the organization in accordance with those restrictions.

Permanently restricted net assets represent net assets resulting from contributions and other inflows of assets whose use by the organization is limited by donor-imposed restrictions that neither expire by passage of time nor can be fulfilled or otherwise removed by actions of the organization.

The details about temporarily and permanently restricted net assets are required to be reported. This information should include descriptions and dollar amounts of the restricted net assets, which are generally disclosed in the notes to the financial statements. The descriptions may include the purpose of various donor restrictions and when restrictions will lapse.

Unrestricted net assets represent net assets that are neither permanently nor temporarily restricted by donors. Board designated or appropriated assets are legally unrestricted assets, which the Board has set aside for specific purposes. Unrestricted net assets may be separately identified within the class or designated for specific purposes. Board designated net assets can be redesignated in the future for other purposes.

## Statement of Activities

The primary areas of focus for the statement of activities are:

- Types and amounts of revenues received
- Dollar values and types of programs and supporting services provided
- Changes in each class of net assets during the period

The statement of activities should provide relevant information about how the organization's resources are used in providing various programs or services.

This information is communicated to the user by reporting:

- Revenues as increases in unrestricted net assets, unless the use of the assets received is limited by donor-imposed restrictions or by law
- Expenses as decreases in unrestricted net assets
- Realized and unrealized gains and losses on investments and other assets or liabilities as increases or decreases in unrestricted net assets, unless the related gains or losses are restricted by donor stipulation or by law
- Net gains or losses resulting from incidental transactions or special fundraising events
- Events that simultaneously increase one class of net assets and decrease another

The statement of activities summarizes the nonprofit organization's operating results and is similar to an income statement of a for-profit entity. The statement of activities may be prepared based on the types of revenues received by the nonprofit organization – unrestricted, temporarily restricted, or permanently restricted. The segregation of revenues is based upon the contributor's, grantor's or donor's intent – not on how the nonprofit organization intends to use the revenue received. Exchange transactions – performing services in exchange for funding, i.e., cost reimbursement or fee for service contracts – are considered unrestricted revenues to the extent expenses are incurred. Generally, all activities of nonprofit organizations are shown as unrestricted net assets. Revenues which are time or purpose restricted are transferred to unrestricted net assets when the restriction has been met. Custodial (Agency) transactions are not shown in the statement of activities as they represent "pass through" transactions. Instead, they are reported in the statement of financial position.

Combining items that have similar characteristics into reasonably comparable groups provides information about revenues and expenses.

In recording the change in a class of net assets from the beginning to the end of a period, the nonprofit organization should use descriptive terms such as change in net assets or change in equity. The terms fund balance or changes in fund balances are not used because those terms refer to separate groups of assets and related liabilities rather than to an entity's net assets or changes in net assets taken as a whole.

Classifying revenues, expenses, gains, and losses within classes of net assets does not preclude incorporating additional classifications within a statement of activities. Within a class or classes of changes in net assets, an organization may classify items as:

- Operating and nonoperating
- Expendable and nonexpendable
- Recurring and nonrecurring

### **Statement of Functional Expenses**

All organizations must report expenses by functional categories (program types, management, general and administrative and fund raising). Voluntary health and welfare organizations must also report expenses by natural classification (salaries, benefits, rent, and contract services) in a matrix format in a statement of functional expenses. The functional expense categories become the expense categories in the statement of activities. Gains, losses and other nonrecurring events should not be shown on the statement of functional expenses. The types of functions reported will vary by nonprofit organization and generally correspond to the types of services for which funding is received.

### **Statement of Cash Flows**

The statement of cash flows is a required part of the complete set of basic financial statements for nonprofit organizations. Its primary purpose is to provide relevant information about the nonprofit organization's cash receipts and cash payments. This statement reports an organization's cash inflows and outflows from operating, investing and financing activities during the reporting period and the net effect of these activities on cash balances.

Operating Activities – Operating activities consist of all activities not defined as investing or financing activities. Operating activities as defined for the statement of cash flows is a broad term and may not correspond to operations as presented in the statement of activities. Operating activities under the indirect method relate to changes in net assets.

Financing Activities – Financing activities for nonprofit organizations include proceeds from borrowing or issuing debt and principal repayments. The following transactions unique to nonprofit organizations are also included in the statement of cash flows as financing activities:

- Receipt of investment income restricted for reinvestment
- Contributions restricted for long-term investment
- Contributions restricted for acquisition of plant and equipment

Investing Activities – Nonprofit organizations report purchases and sales of investments and long-lived assets as investing activities.

Cash and Cash Equivalents – Cash is defined as currency, demand deposits with banks and other institutions, and other accounts with the general characteristics of demand deposits.

Cash equivalents are defined as highly liquid investments that are both:

- Readily convertible to known amounts of cash
- So near their maturity they present insignificant risk of changes in value because of change in interest rates

Non-cash Financing and Investing Activities – The financing of capital purchases through financing or leasing arrangements, the receipt of donated long-lived assets, or investment securities are examples of transactions that should be disclosed in the statement of cash flows as supplemental information.

## **Financial Statement Disclosure**

Notes to the financial statements are intended to add clarity to, and additional information about, the financial information presented. In addition to disclosures required by accounting principles generally accepted in the United States of America about financial activities during the reporting period(s), external factors affecting the nonprofit organization should be discussed if not readily apparent from the financial statements. Typically, the first note to the financial statements discusses or provides a concise description of the nature of the entity's activities, including a narrative description of each of its major classes of programs. This note should be updated annually for new or changed programs and is a good place to "market" your nonprofit organization. Other disclosures could include information on funding sources, future events, uncertainties, concentrations of risk, commitments, subsequent events, going concern matters, foreign or international operations, accounting changes, derivatives, investments, related party transactions, volunteer activities and accounting estimates used in the financial statements. Such information adds to a reader's understanding of the nonprofit organization's activities.

Other Required Financial Statements Unique to Nonprofit Organizations – In addition to the “basic financial statements” described in the preceding pages, nonprofit organizations that receive federal, state or local funding may be subject to additional reporting rules under OMB Circular A-133 or Government Auditing Standards. Generally, those nonprofit organizations expending \$500,000 or more of federal awards, either directly or indirectly, are subject to the reporting requirements of OMB Circular A-133 and will have additional reports rendered on the following:

- Expenditures of federal awards
  - Compliance with laws and regulations and internal control over financial reporting
  - Compliance with requirements applicable to each major program and internal controls over compliance
- Recipients of federal and other funding have a fiduciary responsibility to maintain financial and other records as required by their contracts with funding agencies.

## **Non-Cash Contributions**

### **Why Should Your Organization Consider Non-Cash Contributions?**

Most high net worth households have less than 10% of their net worth in cash, or cash equivalents. According to Giving USA, 72% of contributions to nonprofit organizations come from individuals, and over 99% of households earning in excess of \$200,000 make contributions to charity. According to the research of Paul Schirvish of Boston College, between \$41 trillion and \$131 trillion will pass inter-generationally from the “Baby Boom” Generation over the next half century, Dr. Schirvish estimates that 40% or approximately \$16.4 trillion and \$52.4 trillion, respectfully, is earmarked for Philanthropic causes. Therefore it stands to reason that a nonprofit should focus on non-cash gifts.

### **What are Non-Cash Contributions?**

Non-cash contributions are charitable gifts of something other than cash and may need action by the nonprofit organization to convert them into cash. There may well have positive tax ramifications for the donors to make gifts in this form rather than have the donor convert them to cash and contribute cash to the nonprofit organization.

### **Stock and/or Publically Traded Securities**

Many donors have appreciated stocks or securities that if they were to sell them would generate a capital gains tax liability to the donor. If however they transfer them to a nonprofit organization the donors receive significant tax benefits, the capital gains tax liability is eliminated, in addition to having them receive a charitable deduction for the market value of the security at the time of the gift. Note that a donor can only deduct charitable contributions up to 50% of his/her Adjusted Gross Income (AGI) in the year of the gift. If the donor gifts capital gains stock, he/she can only deduct the value up to 30% of his/her Adjusted Gross Income (AGI) in the year of the gift. The donor can carry forward the unused portion of the deduction into subsequent tax years for tax purposes.

## **Personal Property**

Unlike publically traded securities, the tax benefit to the donor for personal property items such as automobiles, boats, airplanes, furniture, jewelry, art work is at cost. This can be problematic for the artist whose work does carry a significant value. The only tax benefit the artist may receive in the way of a charitable deduction is the cost of his materials: paint, canvas, brushes, frames. Items of personal property are generally not needed to be used in the course of daily operation of the nonprofit organization, and may present a challenge to convert to cash to meet current obligations.

## **Land or Real Estate**

Gifts of real estate can present challenges. Is the proposed gift “raw” or undeveloped land, or what is the structure currently on the land? Is the proposed gift a “fee simple” gift or a gift of an easement to the property? How marketable is the property? Or would the nonprofit organization propose to use it? Are there any zoning issues that would preclude the nonprofit from using the property? What are the conditions of the structures? Are there any DEP hazards connected with the property? Who is the owner of the property and can the donor be in a position to actually make a gift of the property? Can the nonprofit organization hold or dispose of the easement for compensation? What is the property worth? Is there a recent appraisal?

## **Interests in Privately-Held Companies**

Closely held stock, by its very nature is not the same as publically traded stock. There may be a limited market for the shares of a non-publicly traded company. What is the motivation of the donor to give you shares or interests in a non-publically traded company, or limited partnership? What is the timetable for converting these interests into cash for the benefit of the nonprofit organization? Is the nonprofit organization willing to hold these interests until they can be converted into cash?

## **Deferred Gifts or Split Interest Gifts**

These are commonly referred to as “Planned Gifts.” They can be as simple as a bequest or a complex charitable trust.

Bequests - Gifts at death generally referred to in the donor's will. They can be revoked by a new will.

Charitable Gift Annuities - Organized by the nonprofit organization. These are highly regulated vehicles that can be very powerful planning tools for both the donor and the nonprofit organization. While irrevocable, the donor becomes a secured creditor of the nonprofit organization, and receives a lifetime or period certain cash flow.

Pooled Income Trust - Like the Charitable Gift Annuity it is an irrevocable contribution to the nonprofit organization, but the donor is only entitled to a percentage of the income the pool generates. In periods like these of low interest rates they may not be attractive to the donor.

Life Estate - The donor retains the ability to continue to use the property gifted to the nonprofit organization during his life, generally this is real property and the donor retains the right to either live in the house or continue to farm the property gifted to the nonprofit during his/her life time.

Charitable Trusts - These are generally drafted by the donor's attorney, and can be quite complex, but serve the planning concerns of the donor.

A Charitable Remainder Trust (CRT) will pay either a certain dollar amount (Annuity Trust) or a fixed percentage of the year end market value (Unit Trust) to the donor or any individual designated by the donor for that person's life or for a fixed period not to exceed 20 years. The donor receives the tax benefit of being able to take the present value of the amount contributed to the trust as a current tax deduction and avoid the capital gains liability if the property or securities are liable for capital gains taxation upon sale or liquidation. This can be a very effective planning tool for the donor who wants to make a large commitment to the organization, but needs the assets to generate income during his or her life time. The eventual charitable beneficiary of the trust can be changed under certain circumstances.

A Charitable Lead Trust is like a CRT only inside out. It will pay the nonprofit organization either a certain dollar amount (Annuity Trust) or a fixed percentage of the year end value (Unit Trust) for a fixed period of years. If intentionally created as a “defective” trust or Grantor Trust, the donor can receive a current tax benefit of the present value of the value of the property or securities contributed to the trust. The trust would then be liable for income tax on the income the trust generates for the duration of the trust. This vehicle is a very effective tool for the donor who wants immediate tax benefits for a multi-year commitment, and may be more enforceable than a mere pledge. This can be a very effective planning tool for the donor who may want to move considerable discounted assets to younger generations and avoid either Gift or Estate taxes. The charitable beneficiary may be able to be changed on a yearly basis.

## **Gift Acceptance Policies**

It is very important and the fiduciary responsibility of the board of a nonprofit organization to draft and enforce a Gift Acceptance Policy for noncash gifts. These questions are critical:

- How will you accept gifts of securities?
- Do you have a brokerage relationship to receive them and will you hold them or liquidate them immediately upon receipt?
- Will you accept gifts of personal property?
- What kinds of property will you accept?
- Can they be used in the normal operations of the organization?
- Will you accept gifts of art work, or jewelry, or fur coats made of the fur of endangered species?
- Will you accept gifts of real estate?
- Will you accept real estate only if you can use it in the normal operations of the organization?
- What inspections need to be made on site at the property prior to the acceptance?
- Will you only accept fee-simple gifts or will you accept easements or life estates?
- Will you accept gifts of non-public business interests? Under what circumstances?
- Will you pay for the legal fees to create and the administration fees to administer either a pooled income fund or a Charitable Gift Annuity?
- Will you accept the market and longevity risk that a Charitable Gift Annuity program entails?
- Will you agree to underwrite the legal and/or the administration fees for a donor to create and maintain a Charitable Trust?

All these issues should be considered prior to having the organization accept non-cash contributions.

## **Art and Science of Fundraising**

“A hand not extended in giving, is in no position to receive.” Arthur C. Frantzreb

The art and science of fundraising in the nonprofit world is quite simple and complex, all at once. We now live in a world that expects business models, not just “charities.” Society expects accountability, not just blind faith and trust. With that, comes the responsibility of a nonprofit organization and its leadership to build and sustain a culture of philanthropy so that each and every mission – church, school, homeless shelter – will be fulfilled.

Fundraising, or rather development, is critical to an organization’s success; to its present and to its future. Five points for all to consider for successful Annual Funds, Capital Campaigns and Events:

1. Leadership – Strong and committed, confident and giving
2. Urgency – Today! Now!
3. Case for Support – Why we exist, why we need support and how we will use a donor’s contribution wisely
4. Prospects – Who do we know? Who has a history of supporting us?  
Who will be next to give?
5. Communication – Internally and externally, all must speak with one voice on behalf of those being served

Opportunities exist each day for an organization to thrive and grow, serve and serve well. Through solid planning, strong governance and focused execution, nonprofits will succeed and most importantly, missions and visions will be realized.

## **Community Foundations**

The following tools are used by numerous nonprofits and individuals to ensure lasting impact in their communities, often in partnership with a local community foundation. Here in New Jersey, these tools – and others – are offered by the Community Foundation of New Jersey.

## **Tools for Nonprofits and Their Donors**

When a nonprofit organization has proven itself to be of critical value to its community, established systems to deliver its services well, and secured reliable, renewable funding streams, its Board members may start asking, “How can we assure the long-term financial viability of this agency?”

For many organizations, this means developing deeper relationships with key donors that have the interest and ability to make significant gifts to establish or grow endowments, plan for bequests, or consider charitable gift annuities.

Fortunately, a number of tools are available to nonprofits and donors alike. Below are just a few.

### **Designated Agency Funds**

Donors who have a focused commitment to a particular organization may choose to permanently support it through a Designated Agency Fund. A sizable contribution may be invested to provide a source of unrestricted income for the agency both during and after a donor's lifetime. Options exist as well for the distribution of the principal in the fund according to the donor's wishes. Proper stewardship of the dollars guarantees that the good works valued by the donor will continue, even if the original agency ceases to exist.

### **Agency Endowment Funds**

Whereas Designated Agency Funds are appropriate for individuals, Agency Endowment Funds are a good tool for nonprofit organizations. These organizations may establish Agency Endowment Funds to help them meet both their current and future needs. Funding for an endowment may come from a large, one-time contribution, such as from a bequest, or may be the result of a campaign specifically designed to attract many donors to establish a new endowment or to add to an existing fund. The endowment may be managed by a Board sub-committee in conjunction with staff support or it may be invested in a pool designed and managed for long-term charitable purposes, leaving the organization free to concentrate on its good works.

### **Charitable Gift Annuities**

Similar to a Designated Agency Fund, a Charitable Gift Annuity specifies one or more nonprofits as beneficiaries. What is unique about an Annuity is that the donor then receives a lifetime income based on the value of the gift and annuitant rates. On average, at the end of the life of the donor there will be one-half of the original principal amount to be paid to the charity. The other one-half will have been consumed by payments out to the donor annuitant in excess of what the annuity payment is expected to earn. If the donor outlives their life expectancy, the holder of the annuity (often a community foundation), not the charity, maintains the responsibility of paying into the pool to offset the difference between expected and actual numbers.

## Financing for Nonprofit Organizations

### What Nonprofit Organizations Offer Commercial Banks

Nonprofit organizations offer commercial banks the opportunity to grow loans and deposits in a very competitive market. Doing business with nonprofits also offers the bank a chance to enhance its image in the community through exposure to the organization's board of directors, who are often people of significant stature in the community. These relationships have proven themselves to be profitable endeavors for banks due to the deposit account generation and financing opportunities they often provide.

Questions You Should Ask Before Choosing a Bank to Provide Services for Your Organization:

- Does the bank make a market in my specific industry?
- What geographic area does it serve?
- How does my organization compare, in terms of revenue size and loan needs, to similar existing clients of the Bank?
- Does the bank understand my organization's funding sources and any cyclicity of payments?
- Does the bank have a dedicated relationship management and customer service team or do you have to rely on an 800 number?
- Does the bank offer deposit accounts and supporting cash management services? What is the availability of deposited funds? Does my organization have direct access to a cash management representative? Can the bank demonstrate their cash management services and capabilities?
- Will the bank provide me with a cost analysis compared to my existing deposit services provider?
- Can the bank provide my organization with industry references to verify its performance and capabilities?
- What is the account officer turnover rate?
- How responsive is the bank?

#### *Initial Background Information a Lender Will Need*

**History of Organization:** Services provided and how they have evolved since inception

**Management Team:** Titles and functions of senior management; Length of tenure with organization and time in present position; Backgrounds prior to joining organization

**Board of Directors:** Complete list of members with background information and length of time on Board

**Funding Sources:** Major funders/grantors or sources of revenues

**Components of Loan Request:** Amount; Purpose; Requested Tenor; Collateral; Expected Source of Repayment

**Types of Loans:** Working Capital Line; Equipment/Lease Financing; Mortgage Financing; Pledge Loan; Credit Enhancement for Bond Issuances; Direct Purchase of Tax-Exempt Bonds, etc.

**Accounting Information:** Name of CPA firm and name of partner at CPA firm who handles your engagement

**Number of Employees:** Full-time; Part-time; Union or non-union; Length of current union contract

**Internal Financial Reporting:** Frequency; Listing of reports prepared (to include cash flow projections/budget)

Initial Package of Financial Information Needed by the Lender on Loan Request:

- Minimum of three (3) years audited financial statements
- Most recent interim financial along with prior year period for comparison
- Current budget
- Information on funding sources
- List of Board members
- Description of services provided by the organization
- Description of the project to be financed

## **Structuring of Loans for Nonprofit Organizations**

There are a number of primary considerations each bank addresses when structuring financing packages:

Matching loan to purpose: Current assets, primarily receivables when lending to nonprofits, are financed via a working capital line of credit. This line would be expected to reduce in tandem with reductions in receivables, and thereby be available to support cash needs when receivables increase due to timing of revenue receipts. Typically, the line would include an annual 30 day period where there is no outstanding balance.

Fixed asset purchases such as equipment and furniture are financed through term debt or leasing, which is based on the useful life of assets. Working capital lines should not be used for fixed asset acquisitions.

Real estate acquisition and renovations are financed on a longer amortization of debt based on the extended useful life of this asset. Pledge receivables (typically through capital campaigns) to support real estate acquisition/renovations can be considered for financing based on term of the pledges and the anticipated payment of such pledges. Typical repayment is interest payable monthly with minimum annual principal reductions. The repayment matches the preponderance of pledges being collected. Financing for real estate acquisition/renovations can also be considered through a tax exempt bond issuance. In certain cases, the bond issuance is supported by a letter of credit issued by a bank or may be a private placement bond held by a bank.

The above is a general outline of loan structuring which serves the purpose of matching the loan repayment to the expected sources of cash. The structuring helps to maintain the integrity of an organization's balance sheet, which is of vital importance to lenders and the various organizations that supply grants and contributions to nonprofits.

**Supporting loans with collateral.** Each type of loan is typically supported by a specific match of collateral which by its nature is best suitable to short, intermediate or long term financing. The following collateral and ratios usually support the aforementioned loan facilities when banks lend to nonprofits:

**Working capital lines** are secured by receivables.

**Term debt and leasing facilities** are supported by fixed assets.

**Mortgage debt / Bond issuance** is secured by a first mortgage lien typically at up to 70% - 80% of the lower of cost or appraised value.

Pledge loans advance rates are based on the estimated quality of the pledges. Heavy concentration of pledges with a small group of individuals or lesser-known organizations may further limit the amount the bank will advance. This is due to concerns of negative impact if a particular pledge should become impaired. Pledges by their nature are not strong collateral, so a great deal of subjective analysis is undertaken by the bank to determine a comfortable advance level. Well-known donors, breadth of pledgers and prior success in an organization's campaign efforts can substantially contribute to the advance percentage the bank will allow.

All of the collateral segments in the preceding outline match collateral to specific facilities. A lender will also do an analysis of aggregate loan exposure to the aggregate collateral. A shortfall in a particular collateral segment can then possibly be offset by excess collateral in another segment. It is typical that all of a lender's loans are cross-collateralized.

**Loan pricing.** This is one of the earliest questions any borrower asks of a lender. It is a question that a lender cannot fairly answer until the lender is in receipt of the preliminary financial information as outlined earlier in this section. Among the factors that go into pricing of loan facilities are:

- Historical excess revenues
- Historical cash flow
- Strength of balance sheet
- Balance sheet liquidity
- Ability to service existing and proposed debt
- Overall collateral strength
- Industry trends
- Level of monitoring required

## IRS Form 990 Continues to Pose Challenges

Following its first major revision in nearly 30 years, the modified IRS Form 990 has been in effect since the 2008 tax year. The revised form was re-designed to increase transparency of tax-exempt organizations while presenting the IRS and stakeholders with a realistic picture of entities and their operations.

In particular, the form asks some specific questions about governance and management practices such as how executive compensation was established and whether you made governing documents, financial statements and conflict of interest policies available to the public. In addition, you will need to indicate the following:

- Whether you contemporaneously documented meetings and actions
- Whether you have a conflict of interest policy and if you monitored and enforced it
- Whether you have whistleblower policies and if allegations are reviewed and resolved
- Whether you have document retention/destruction policies in place
- Was your Form 990 provided to your governing body for review prior to filing?
- Describe the process used by the organization to review the Form 990

Remember that despite the continuing challenges, there are benefits. Form 990 gives your organization the opportunity to publicly share how your operations and finances align with your mission. You can also market your organization through your IRS Form 990. Simply stated, take advantage of the space provided on the Form 990. The first question in Part I allows an organization an opportunity to get a reader excited about what your organization does. Use this opportunity to tell donors why your organization SHINES! You should describe your most significant activities instead of the mission statement. Your mission can be included later in response to a specific question on the mission statement.

One of the goals of the IRS Form 990 is for nonprofits to report all information directly on the core form and schedules, rather than including separate attachments. The revised Form 990 consists of an 11-page core form. In addition, the new form's 16 schedules are designed to require reporting of information only from those organizations that conduct particular activities (a checklist of required schedules is part of the form). The form includes the following:

**Summary Page** – A summary page at the beginning of the Form 990 is intended to provide a snapshot of your organization's activities and finances, including basic information about revenues, expenses, fundraising, compensation, unrelated business income, and the number of employees and board members. Both prior-and current-year data are required, resulting in a two-year comparison.

**Financial Information** – With the Form 990, you report revenues and functional expenses somewhat differently. Many of the reporting categories differ from standard nonprofit accounting classifications and may require revising your accounting systems and software. The form requires nonprofits to break down contributions, gifts and grants into categories of:

- Federated campaigns
- Fundraising events
- Noncash contributions
- Government grants
- Membership dues
- Related organizations
- Other gifts, grants and contributions

You must also comply with the following:

- Utilize several classifications of functional expenses, including fees for management, lobbying, investment services, advertising and promotion, office expenses, information technology and royalties.
- Itemize functional expenses categorized as “other expenses.” Note that “miscellaneous” expenses cannot exceed 5% of total expenses.

Note also that all nonprofit organizations that report on a GAAP basis are subject to accounting for uncertainty in income taxes. If income tax liabilities are accrued, the exact language that is put in the footnote to the financial statements is required to be duplicated on Schedule D of the Form 990.

**Compensation** – In general, compensation of officers, directors and key staff is included in Part VII of the Form 990, along with Schedule J, Supplemental Compensation Information. Some of the key highlights include:

- Officers, directors and key employees must be combined in a single list
- The threshold for reporting compensation of the five highest salaried employees is \$100,000 of reportable compensation from the organization and any related organizations
- Compensation figures must be taken from Form W-2 or Form 1099  
In addition, you’ll be asked in Schedule O to describe the process by which your governing body reviewed the organization’s Form 990 before filing.

**Program Services** – The Statement of Program Service Accomplishments on the Form 990 includes:

- Reporting direct revenue related to each of your three largest program services in addition to reporting expenses for each program service. Direct revenue would include only income from fees for services and sales of goods directly related to a program; it would not include other indirect revenue or in-kind contributions.
- You must describe your three most significant program service accomplishments on the core form.
- You must describe (in three lines) your most significant program service accomplishment for the year.

## Which Forms Do Exempt Organizations File?

Most tax-exempt organizations are required to file an annual return. Which form an organization must file generally depends on its financial activity, as indicated in the chart below:

<b>Financial Activity</b>	<b>Form to File</b>
<b>Gross receipts normally <math>\leq</math> \$50,000</b> <b>Note: Organizations eligible to file the e-Postcard may choose to file a full return</b>	<b>990-N</b>
<b>Gross receipts <math>&lt;</math> \$200,000 and Total Assets <math>&lt;</math> \$500,000</b>	<b>990-EZ or 990</b>
<b>Gross receipts <math>\geq</math> \$200,000, or Total assets <math>\geq</math> \$500,000</b>	<b>990</b>
<b>Private foundation</b>	<b>990-PF</b>

## The Implications

The implications of incorrect and incomplete Form 990 reporting are serious. IRS penalties aside, your Form 990 is easily available to the general public and will certainly receive scrutiny. Carefully review the reporting requirements to ensure that you are in full compliance. You may also want to encourage the board of directors to actively review the completed Form 990 prior to filing.

Smaller Nonprofits Report on e-Postcard

Nonprofits with less than \$50,000 in annual gross receipts are required to file an e-Postcard (Form 990-N) every year. The only information required on the e-Postcard includes the organization's name, mailing address, website address, employer identification number and annual tax period; the name and address of a principal officer of the organization; and a statement that the organization's annual gross receipts are normally less than \$50,000.

An organization that fails to file Form 990-N for three consecutive years will automatically lose its tax-exempt status. Accordingly, it is critical that responsible officers of small nonprofits implement procedures to ensure that the Form 990-N filings are completed. If a nonprofit loses its tax exempt status, it must reapply via the IRS by refile for tax exemption using IRS Form 1023.

# Nonprofit Tax Issues

## Unrelated Business Income (UBI)

Unrelated business income is income received by tax-exempt organizations from an activity that is conducted on a regular basis and is not directly related to an organization's tax-exempt mission.

Tax exempt organizations may still be liable for income tax if it receives income from activities unrelated to its exempt purpose. An exempt organization that earns more than \$1,000 of gross unrelated business income must file Form 990-T and pay unrelated business income tax (UBIT) on any net income.

UBI is income which meets three tests:

1. It is from a trade or business
2. It is regularly carried on
3. It is not substantially related to an organization's exempt purpose

In addition, UBI may not be taxable if it falls into certain categories of exceptions and exclusions.

Generally speaking, if your organization sells goods or services to generate income, even if it is conducting the activity as part of a larger group of activities related to its exempt purpose, the activity is considered a trade or business. In most instances, an activity is considered regularly carried on if it is conducted in the same manner and frequency as a for-profit organization would conduct the activity. The IRS gives this example:

A hospital auxiliary operates a health food stand for one week at a preventative health education conference. Because the activity is a one-time occurrence and is unlikely to compete with for-profit health food stores that operate year-round, the activity is not "regularly carried on." However, if the hospital auxiliary operates a health-food stand daily at the hospital, that is likely the regular conduct of a trade or business.

If the activity meets the above two tests, the last item to consider is if the activity is substantially related to your organization's 501(c)(3)'s exempt purpose. The important thing to remember here is that the generation of money to support your exempt purpose does not qualify as a "substantially related" activity.

## Common Exceptions and Exclusions to UBI

The IRS code specifically excludes certain types of income from UBI. Some income excluded includes interest and dividend income, rents from real property, royalty income and gains or losses from the sale of property. Additionally, some types of income are exceptions to UBIT, a few common exceptions are:

Volunteer workforce - If 85% or more of the work is performed by uncompensated volunteers, the income is exempt from UBIT.

Convenience of members - If the trade or business activity is run primarily for the convenience of members, students, patients, employees, or officers, the income is exempt from UBIT.

Sale of donated merchandise - Income earned from the sale of goods that substantially all of which was donated, is exempt from UBIT.

Distribution of low-cost articles - If the organization distributes items that the cost to the organization qualifies as low cost (currently \$9.10), and then receives a donation in return, the income received is considered a full contribution and is exempt from UBIT calculations.

Convention or trade show activity - The IRS recognizes that many organizations regularly conduct activities in conjunction with an annual meeting, trade show or convention. The regulations state in order to qualify as exempt from UBIT the activities must be either to promote and stimulate interest in the products and services of the exempt organization and/or its community or to educate attendees about issues of the organization's industry. For example, at their annual convention, an exempt organization charges exhibitors a rental fee for space to set up their display. This income may be excluded from the UBIT calculation if the display meets the above standards.

Sponsorship - Often an exempt organization will seek sponsors for its fundraising events. To qualify as exempt from UBIT the payment can only buy an acknowledgement of the contributor's name, logo or product line and it cannot be used to advertise the contributor's products or services.

A complete list of the exceptions and exclusions to UBIT can be found in IRS publication 598, Tax on Unrelated Business Income of Exempt Organizations, which can be downloaded at <http://www.irs.gov/pub/irs-pdf/p598.pdf> .

## **Charitable Gaming**

Many organizations conduct some sort of gaming in order to raise income. Gaming activities include bingo, keno, slot machines, beano, raffles, 50/50s, lotteries, pull-tabs, scratch-offs, pickle jars, punchboards, tip boards, tip jars, paramutual betting, Calcutta wagering and certain video games. In almost every case, gaming activities do not further an exempt purpose and will therefore generate unrelated business income unless exceptions or exclusions apply (as in the exception for traditional bingo).

A 501(c)3 organization can lawfully conduct gaming if it is not a substantial part of the organization's activities and the funds raised are used for the organization's exempt purpose.

An exempt organization may still be responsible for filing a W-2G Statement for recipients of certain gambling winnings when prizewinners receive over certain dollar amounts. The organization may also be required to withhold federal income tax from the amount won. This includes prizes that are non-cash (such as a vacation or big screen television) where the fair market value of the item won is the amount of the winnings. In this case, the winner would have to pay the withholding tax to the organization which should be collected when the prize is awarded.

The IRS discusses gaming and reporting requirements in its publication 3079, Gaming Publication for Tax-Exempt Organizations.

In New Jersey, every organization interested in conducting bingo or raffles must first apply to the Division of Consumer Affairs for eligibility. If the Commission determines that the applicant qualifies as a bona fide charitable, educational, religious, patriotic, public-spirited organization or senior citizen association or club, it issues a registration certificate reflecting its identification number.

The Charitable Registration and Investigation Act of 1994 requires any group organized as a 501(c)(3) entity or which raises money for charitable purposes to register with the Charitable Registration and Investigation Section of the New Jersey Division of Consumer Affairs.

Once registered with the Legalized Games of Chance Control Commission, the organization must file a license application(s) for each separate type of game of chance it intends to conduct from the appropriate municipality where the games are to be held. Upon doing so the organization must exhibit its identification card to the municipal clerk when submitting the license application.

## **Jeopardizing Exemption Status**

Once an organization receives its IRS determination letter stating that it qualifies for exempt status, the organization must continue to act in accordance with that ruling in order to retain its status. There are four ways that an organization can lose its exempt status. These are:

### **1. Private Inurement/Benefit**

A 501(c)3 must not conduct any activity that will substantially benefit a private interest of any individual or organization. A public charity must serve the public interest. The code further states that “no part of an organization’s net earnings may inure to the benefit of a private shareholder or individual.” This means that no part of the exempt organization’s assets or income can accrue to insiders. The most common infraction in this area is in paying unreasonable compensation to insiders or transferring property to them at less than fair market value. Any amount of inurement is grounds for losing the tax exempt status and, even in cases where the IRS does not revoke the exempt status, the insider involved may be subject to large excise taxes.

## **2. Lobbying**

Activities that are conducted in an effort to influence legislation are severely restricted for 501(c)3 organizations. Lobbying includes contacting, or encouraging the public to contact, a member or employee of a legislative body in order to propose, support or oppose legislation. If lobbying is a substantial part of the organization's activities, it may be jeopardizing its exempt status.

Organizations may elect to have their lobbying activities measured under an expenditure test known as the 501(h) election. Under this election, a 501(c)3's lobbying activity will not jeopardize its exempt status so long as its expenditures related to lobbying remain under the amount specified in Code section 4911. For more information on this election, please contact your Sobel & Co. advisor.

## **3. Political Campaign Activity**

501(c)3 organizations are strictly prohibited from engaging in any political campaign activity. This includes any activity that is directly or indirectly participating or intervening in any political campaign either on behalf of or in opposition to any candidate for public office. This includes, but is not limited to, making contributions, making public statements or endorsing a candidate. ANY political campaign activity may jeopardize the organization's exempt status and may cause the organization to become subject to excise taxes on its political expenditures. Organizations should also note that this prohibition applies to all levels of candidates from local to national level.

## **4. Excessive Unrelated Business Income**

If an organization receives an excessive amount of its support from unrelated business income it may be jeopardizing its exempt status. Please review the section for unrelated business income to learn more about this topic.

## **Substantiation of Contributions**

There are two rules that must be followed in order to meet IRS substantiation and disclosure requirements:

1. A donor is responsible for obtaining a written acknowledgement from a charity for contributions they claim as a deduction on their income tax return. An exempt organization can assist a donor by providing a timely written statement that includes:
  - The name of the organization
  - The amount of the cash contribution
  - A description of the non-cash contribution
  - A statement that no goods or services were provided by the organization in return for the contribution (if applicable)
  - A description and good faith estimate of the value of any goods or services that were provided in return for the contribution
  - A statement that any goods or services provided consisted entirely of intangible religious benefits (if applicable)

2. A charitable organization is required to provide a written disclosure to a donor who receives goods or services in exchange for a single payment in excess of \$75. This usually is in the form of a payment that is partially a contribution and partially for goods or services, otherwise known as a quid pro quo contribution. For example: a donor writes a check to an organization for \$200 in order to attend its annual benefit concert. The concert ticket has a fair market value of \$50. The donor's tax deduction may not exceed \$150 because the donor's payment of \$200 exceeds \$75.

The written disclosure should contain the same information described above but is not required when the goods or services meet certain exceptions such as for token (low cost) goods, membership benefits, or intangible religious benefits or where there is no donation element involved in the transaction.

Failure by charities to provide timely written disclosure can result in penalties of \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing.

### **Public Disclosure Requirements**

Generally, an exempt organization must have certain documents available for public inspection and provide copies of such documents to individuals requesting them. These documents include Form 990, 990-EZ, 990-PF, 990-T and applications for exemption including Form 1023, Form 1024 and others.

IRS regulations specifically exclude the name and address of any contributor so a tax-exempt organization is generally not required to disclose the names or addresses of its contributors on its annual return, including Schedule B (Form 990, 990-EZ, or 990-PF). However, any contributors' names and addresses listed on an exempt organization's exemption application are subject to disclosure. This general exclusion for contributor information on annual returns does not apply to private foundations, or to political organizations described in section 527.

Since an organization does not have to comply with individual requests for these documents if it makes the documents widely available, many organizations post the documents on a readily accessible worldwide web site. To qualify, the documents must be posted in a format that meets certain criteria. One format that currently meets the criteria is Portable Document Format or PDF.

### **Change in Purpose or Activities**

Once an organization is recognized as tax exempt by the IRS, it must notify the IRS of any changes to its organizing documents, by-laws, activities or exempt purpose. An organization that is required to file an annual return must report the changes on its return. If it does not have to file an annual return, the organization must report the changes to the Exempt Organization Determinations Office. For example, if an organization decides that it will start offering scholarships as one of its program activities, the organization must include the same information that would have been requested on an initial application for exemption about its scholarship program to the IRS.

## **Providing Scholarships, Fellowships, etc.**

In general, payments made to individuals may further an organization's educational purpose if the selection was racially non-discriminatory, based on need and/or merit, or to a charitable class rather than to pre-selected individuals.

When completing Form 1023, Application for Exemption, or when notifying the IRS of scholarship activity at a later date, the organization must submit the following information:

- A description of the different grant programs and the purpose of each program
- An explanation of how the programs will be publicized and whether they will be to the general public or another group of recipients. This information must include specific information about the geographic area and the means by which the programs will be publicized
- The basis and procedure for how recipients will be determined
- Samples of any solicitation materials or announcements of award winners must be submitted
- An explanation of how records and case histories will be maintained

## **Special Events**

Many organizations run special events such as dinners, golf outings, raffles, carnivals, etc. as a way to raise money for their exempt purpose. These special events only incidentally accomplish an exempt purpose and their primary purpose is to raise funds to finance the organization's exempt activities. Record keeping for special events should be meticulous in order to avoid any misclassification of income.

Sponsorship income, as described in the section on UBI, should be recorded separately from gross revenue and contributions. Gross revenue and contributions are earned by offering the goods or services that have more than a nominal value for a payment that is more than the direct cost of those goods or services. When reporting special event income on Form 990 or 990-EZ an organization must distinguish between:

Gross revenue - the retail value of the goods or services; and

Contributions - any amount received that exceeds the retail value of the goods or services given.

For example, an organization hosts a golf outing as a special event. The retail value of a round of golf at the chosen course is \$100. Each participant pays \$250 to participate in the outing. The organization reports \$100 per ticket as gross revenue and \$150 per ticket as contribution.

In addition, expenses relating to each event should be maintained separately in the organization's records. Direct expenses are reported on page nine, line 8b of Form 990 while indirect expenses are reported on page ten as fundraising on the Schedule of Functional Expenses. For example, in the instance of a golf outing, the course fees would be a direct expense of the event while printing and mailing of the invitations would fall under fundraising. When considering what expenses are direct think about the retail value of the goods or services provided. In this example, what would an individual person purchasing a \$100 round of golf be paying for? It would pay for the use of the greens, a caddy, or perhaps a golf cart rental. It would not pay for the printing of invitations.

## **Supporting Organizations**

Supporting organizations are public charities that carry out their exempt purpose by supporting one or more other exempt organizations, usually other public charities. This classification can be important to an organization that would otherwise be a private foundation which is subject to many more rules and regulations. A supporting organization must have a strong relationship with the organization it supports in order to avoid classification as a private foundation. This relationship would allow the organization that is being supported to oversee the operations of the supporting organization.

In addition to being organized exclusively for exempt purposes, a supporting organization must be organized and operated exclusively to support specified supported organizations. There are three relationships that are defined by the IRS and are all intended to ensure that the supporting organization is responsive to the supported organization. The types of supporting organizations are:

Type I - Organizations that are operated supervised or controlled by the supported organization. (Parent-Sub relationship)

Type II - Organizations that are supervised or controlled in connection with the supported organization (Brother-Sister relationship)

Type III - Organizations that are operated in connection with the supported organization. Since this is the least formal relationship, a Type III organization must also meet other tests to determine responsiveness

The Pension Protection Act (PPA) of 2006 changed requirements for supporting organizations and included the new Type III - Fully Integrated as qualified distributions for private foundation's contributions.

Type III Fully Integrated - Newly defined in section 4943(f) of the Pension Protection Act as an organization which is not required under regulations established by the Secretary to make payments to supported organizations due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

## **Donor Advised Funds**

When a separate account or fund is set up by a charity in order to receive contributions from a donor or a group of donors, this maintained fund is called a donor advised fund. Payments to a donor advised fund may only qualify as a completed gift to the charity if the charity has final say-so over how the fund's assets are invested and distributed in furtherance of its exempt purposes. Donors may recommend charitable distributions from the account but the charitable organization must have the autonomy to accept or reject the donor's recommendations and make its own decisions.

According to IRS Guidance Notice 2006-19, The Pension Protection Act of 2006 also treats as a taxable distribution any distribution from a donor advised fund to a Type II supporting organization that is not functionally integrated or to any other supporting organization if the fund's donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the grantee if the sponsoring organization does not exercise expenditure responsibility with respect to such distribution.

Donor advised funds are coming under greater scrutiny and regulatory control due to certain abusive arrangements that have been found to be set up primarily for the donor's own benefit. Exempt organizations that participate in these types of arrangements may jeopardize their tax exempt status. Please speak to your tax advisor immediately if you are unsure about your organization's donor advised fund activities.

# Payroll and Nonprofit Tax Reporting

## Federal Forms to be Filed

Every nonprofit organization paying wages to its employees is required to withhold from the employees' gross earnings specified amounts of Federal Income, Social Security, and Medicare taxes under the Federal Insurance Contribution Act (FICA).

Federal Income Tax is a prepayment of the employee's personal income tax obligation. The amount of tax withheld from the employee's compensation is based on the pay period, the employee's marital status and the number of exemptions the employee has claimed on Federal Form W-4. The amount to be withheld is determined from the tables in the Federal Circular E published by the Internal Revenue Service.

Wages are subject to the FICA tax, which is really made up of two taxes:

- 1) Social Security tax of 6.2% up to a maximum amount of annual compensation, and
- 2) Medicare tax of 1.45% on all compensation.

FICA taxes are withheld from employee compensation and matched by the employer. The Federal forms relating to these taxes are Form 941.

Additional Medicare tax effective January 1, 2013 of 0.9 percent applies to an individual's wages that exceeds a threshold amount based on the individual's filing status. The threshold amounts are \$250,000 Married filing jointly, \$125,000 Married filing separately, and \$200,000 for all other taxpayers. An employer is responsible for withholding the Additional Medicare Tax from wages it pays to an employee in excess of \$200,000 in a calendar year.

**Form 941** – is the “Employer’s Quarterly Federal Tax Return.” It summarizes and reports to the IRS the amount of Federal Withholding, Social Security, and Medicare withheld from all the employees, and the employer’s portion of the Social Security and Medicare taxes.

For the Quarter:	Due Date:
Jan-Feb-Mar	April 30
Apr-May-Jun	July 31
July-Aug-Sep	October 31
Oct-Nov-Dec	January 31

If you deposit taxes on a regular basis, you have ten additional days at the close of the quarter to file Form 941. For example, if you deposited all of the required taxes for the quarter ended March 31, the Form 941 for that quarter will be due on May 10 instead of April 30.

Form 940 Federal Unemployment Tax (FUTA) is not required to be filed for any organization that is exempt from income tax under section 501(c)(3).

Summary of Current Regulations for FICA, Medicare and Federal Withholding Taxes:

### Making Payment

Employers with less than a \$2,500 tax liability during the quarter may make a payment with Form 941. If unsure whether tax liability will be less than \$2,500, make the appropriate deposit to avoid deposit penalties.

## *Deposit Schedules*

There are two deposit schedules

- Monthly
- Semiweekly

These schedules determine which set of deposit rules must be followed when an employment tax liability arises. The deposit schedule is not determined by how often employees are paid, but are based on the date wages are paid.

## *Lookback Period*

- The deposit schedule used is based on the total tax liability reported on Form 941 during a four quarter lookback period.
- For each year the lookback period begins July 1 and ends June 30 as follows:  
Ex: For calendar year 2013, the lookback period is:

Quarter 1 07/01/11 – 09/30/11

Quarter 2 10/01/11 – 12/31/11

Quarter 3 01/01/12 – 03/31/12

Quarter 4 04/01/12 – 06/30/12

## *Scheduled Deposits:*

- If the tax liability is under \$50,000 for the entire four quarter lookback period, you are a monthly depositor and your taxes are due by the 15th day of the month following the month for which you are making the deposit. If the tax liability is \$50,000 or more for the lookback period, you are a semiweekly depositor and should follow the schedule below.
- If an employer's payday falls on a Wednesday, Thursday or Friday, taxes must be deposited by the following Wednesday.
- If an employer's payday falls on a Saturday, Sunday, Monday or Tuesday, taxes must be deposited by the following Friday.

## *Next Day Deposits*

- Employers with an accumulated liability of \$100,000 or more on any day must deposit the tax within one banking day.
- If over \$100,000 is accumulated in one day for a semiweekly depositor, stop accumulating at the end of that day and begin to accumulate new totals on the next day and continue to follow the regular semiweekly schedule (see above).
- If over \$100,000 is accumulated in one day for a monthly scheduled depositor, stop accumulating at the end of that day and begin to accumulate new totals on the next day, BUT follow the semiweekly deposit schedule for the rest of the calendar year and for the following calendar year.

## *Electronic Deposits*

- Taxes must be paid using the Electronic Federal Tax Payment System (EFTPS) if:
  1. The total deposits of all depository taxes (such as employment, excise tax and income tax), in 2012 were more than \$200,000  
Or
  2. Use of EFTPS was required in 2012, or any prior year.

- Transactions for EFTPS must be initiated by 8 p.m. eastern time one business day before the date the deposit is due.
- If you are required to use EFTPS and fail to do so, you may be subject to a 10% failure-to-deposit penalty.

For more information or to enroll in EFTPS, call 1-800-555-4477.

**Form W-2.** This form is the “Wage and Tax Statement.” It summarizes the gross compensation paid to, and the taxes withheld from, an employee. At the end of each calendar year, a W-2 is prepared for each employee, reporting the employee’s wages (salary) for that year.

- Copy A of the W-2 is mailed with Form W-3 to the Social Security Administration.

Copy 1 of the W-2 is mailed with Form NJ W-3 to New Jersey.

Copy D of the W-2 is kept for the employer’s files.

Copies B, 2 and C of the W-2 are given to the employee no later than January 31st of the following year.

**Form W-3.** Form W-3 is the “Transmittal of Income and Tax Statements.” The wages paid and taxes withheld for all employees, in total, are reported on this form. It is sent to the Social Security Administration with all A Copies of all the employees’ W-2 Forms. The W-3 must be filed no later than February 28th of the following year.

**Form W-4.** When an employee is newly hired, the new employee must complete the Form W-4, Employee’s Withholding Allowance Certificate. The W-4 reports the employee’s marital status and the number of allowances the employee wishes to claim for income tax purposes. An allowance may be claimed for the employee, the employee’s spouse, and dependents of the employee, for blindness and for being age 65 or over. Any time an employee’s marital status or number of allowances changes, a new W-4 must be filled out by the employee and given to the employer.

**Form I-9.** When an employee is hired he/she must also complete Section 1 of Form I-9, Employment Eligibility Verification. The employee must provide a form of identification from the list of acceptable documents found in the instructions to Form I-9 to prove that he/she is eligible to work in the United States. The employer is responsible for ensuring that Section I is timely and properly completed by the employee before completing Section 2 of Form I-9. The employer must complete Section 2 by examining the evidence of identity and employment eligibility within three business days of the date of employment.

**Form 990.** Organizations exempt from taxes under the Internal Revenue Code (IRC) Section 501(d) are required to file a Form 990 annually, except the following types of organizations:

- A church, an association of churches, or a church auxiliary
- An exclusively religious activity of any religious order
- An organization which normally does not have more than \$50,000 in gross receipts or the year\*
- A mission society sponsored by, or affiliated with, a church
- A school which is affiliated with a church and is below college level
- A state institution
- A corporation organized under an Act of Congress

For tax year 2013 (generally filed in 2014) and tax year 2012 (generally filed in 2013) an organization may file a simplified form, 990-EZ, if gross receipts are less than \$200,000 AND total assets are less than \$500,000.

\*If an organization that normally does not have gross receipts in excess of \$50,000 must still file the 990-N (postcard) to maintain exempt status.

**Form 990PF.** Private foundations are required to file Form 990PF annually.

Both the 990 and 990PF must be filed with the Internal Revenue Service by the 15th day of the fifth month after the end of the organization's fiscal year. An automatic three-month extension to file the 990 and 990PF can be requested by completing Form 8868 by the due date of the return. If necessary, an additional three-month extension may be granted by the IRS by filing Part II of Form 8868 with a detailed description of the reason the extension is needed as it is not automatic.

The following schedule should be used to determine the date when the 990 is due.

<u>IF THE FISCAL YEAR ENDS:</u>	<u>DUE DATE:</u>
January 31	June 15
February 28/29	July 15
March 31	August 15
April 30	September 15
May 31	October 15
June 30	November 15
July 31	December 15
August 31	January 15
September 30	February 15
October 31	March 15
November 30	April 15
December 31	May 15

**Form 990T.** This is the Exempt Organization Business Income Tax Return. This form must be filed by any tax-exempt organization which receives, within its fiscal year, gross income of \$1,000 or more from an unrelated trade or business. Gross income is gross receipts less cost of goods sold. This form must be filed with the Internal Revenue Service by the 15th day of the fifth month after the end of the organization's fiscal year (See previous schedule.)

**Form 990-N.** Beginning in 2008, small tax-exempt organizations that previously were not required to file returns may be required to file an annual electronic notice, Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ. Organizations that do not file the notice will lose their tax-exempt status.

Small tax-exempt organizations, whose gross receipts are normally \$50,000 or less, are not required to file Form 990, Return of Organization Exempt From Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt from Income Tax. With the enactment of the Pension Protection Act of 2006 (PPA), these small tax-exempt organizations will now be required to file electronically Form 990-N, also known as the e-Postcard, with the IRS annually. Exceptions to this requirement include organizations that are included in a group return, private foundations required to file Form 990-PF, and section 509(a)(3) supporting organizations required to file Form 990 or Form 990-EZ. In addition, this filing requirement does not apply to churches, their integrated auxiliaries, and conventions or associations of churches.

To file the 990-N you can access the system link at <http://epostcard.form990.org>.

The PPA requires the IRS to revoke the tax-exempt status of any organization that fails to meet its annual filing requirement for three consecutive years. Therefore, organizations that do not file the e-Postcard (Form 990-N), or an information return Form 990 or 990-EZ for three consecutive years will have their tax-exempt status revoked as of the filing due date of the third year.

**Form 8282.** This form must be filed by donee organizations that sell, exchange, consume or otherwise dispose of (with or without consideration) charitable deduction property within two years after the date the original donee received the property. This form is due within 125 days after the date of disposition.

**Form W-2-G.** This form is used to report gambling winnings of \$600 or more. Form 5754 should be used if more than one person is entitled to any part of the winnings.

**Form 1096.** This form is a transmittal or cover form which must accompany all copies of the 1099 Forms filed. Copies of the 1099 forms are to be mailed with a 1096 no later than February 28th of the following year. A separate 1096 must be used for each type of 1099 (i.e., 1099-MISC, 1099-INT, etc.).

**Form 4720.** This form is used by a private foundation, foundation manager, or disqualified person if subject to penalty taxes. The filing due date is the 15th day of the fifth month after close of taxable year.

**Form 1120POL.** This form is used by political organizations. The filing due date is the 15th day of the third month after close of taxable year.

**Form 1120H.** Homeowner’s associations use this form. The filing due date is the 15th day of the third month after close of taxable year.

## **New Jersey Forms to be Filed**

### *Charities Registration and Investigation Section*

Every charitable organization – except those listed in (2) below – which intends to solicit contributions in New Jersey from individuals or from governmental agencies must file a registration statement with the State’s Charities Registration and Investigation Section prior to any solicitations.

Religious organizations and educational institutions (approved by the State Department of Education) and certain local units of a parent organization are exempt from registration requirements.

Prior to soliciting contributions, organizations should fill out **Questionnaire Form CRI-100** to have the State of New Jersey determine the registration requirements.

Filing of Annual Reports – in every case an affidavit or an annual report must be filed as follows:

- A. File Short Form **CRI-200** if the organization:
  - 1. Did not solicit or intend to solicit and did not, in fact, receive contributions in excess of \$25,000 and if all the fundraising functions are carried on by persons who are unpaid for such services;

2. Is exempt from long form registration by reason of any of the following status:
- a. A fraternal, patriotic, social or similar organization
  - b. Persons requesting contributions for the relief of a specified individual, whose contributions are turned over (without any deductions) to the named beneficiary; and
  - c. A local post, camp, chapter or similarly designated element
- B. All other "organizations" should file Long Form CRI-300. An audited financial statement must accompany this form if gross revenue is more than \$500,000.

Registration fees for charities with gross contributions between \$0 and \$25,000 – is \$30.00 (short-form filers).

Registration fees for long form filers are as follows:

\$25,001 to \$100,000	\$60
\$100,001 to \$500,000	\$150
more than \$500,000	\$250

Election not to register if they take in less than \$10,000 in gross contributions if all functions and fund raising activities are done by volunteers, religious organizations and schools that file their curricula with the Department of Education or Libraries registered by the State Department of Education who meet their prescribed financial reporting requirements.

**New Jersey Employers and all other States’ New Hire Reporting Requirement**

New hire reporting for New Jersey and other states is a requirement that all employers for both public and private, file within 20 days of hire or rehire all employees or independent contractors.

# **Legal Issues in Establishing Nonprofit Organizations**

(A Primer on 501(c)(3) Status)

## **Background**

The principal vehicle for formation of a nonprofit organization under New Jersey law is incorporation under the New Jersey Nonprofit Corporation Act (the “Act”), codified at Title 15A of the New Jersey Statutes. The Act became effective in 1983 and was the product of a comprehensive revision of the New Jersey laws regulating nonprofit corporations. Nonprofit organizations had existed in the state since colonial times.

Until the late 1800s, there had been no comprehensive body of law governing nonprofit corporations generally. In 1898, a statute was enacted to address associations organized as nonprofit. Over the next 80 years, such statutory framework and case law developed on a piecemeal basis. As a result, there was no coherent body of law to provide guidance for those operating as nonprofit organizations. The main purposes of the Act when adopted in the early 1980s were to provide a general corporate form for the conduct of nonprofit activities and to make the law governing nonprofit corporations as nearly compatible with the New Jersey Business Corporation Act as practicable. The Act, as it has been amended and interpreted in cases over the years, provides a broad and flexible legal context for the governance and operation of New Jersey nonprofit organizations

## **Formation of Nonprofit Corporations**

New Jersey nonprofit corporations are formed under the Act by filing a certificate of incorporation with the New Jersey Department of the Treasury. The Act provides that corporations may be organized for any lawful nonprofit purpose and includes a broad non-exhaustive list of examples of purposes which are for other than pecuniary profit. N.J.S.A. §15A:2-1(a). Unlike business corporations, nonprofit corporations shall not have or issue capital stock or shares. N.J.S.A. §15A:2-1(d). The Act provides for nonprofit corporations either with or without members. Although the concept of membership is similar to the status of shareholders of for profit corporations, they are distinguishable in that no dividends or income or profit are distributed to members of nonprofits. Nonprofit entities with members are sometimes referred to as mutual benefit organizations, being those which serve their designated members, such as labor unions, trade associations and condominium associations.

The Act sets forth the requirements for the certificate of incorporation. N.J.S.A. §15A:2-8. For example, the filing must state the purpose, indicate whether or not the corporation will have members, and identify the initial trustees. Upon incorporation and at all times thereafter, New Jersey nonprofit corporations must have at least three trustees constituting the board. N.J.S.A. §15A:6-2. After filing the certificate of incorporation, the board shall conduct an organizational meeting in order to adopt bylaws, elect officers, provide for initial members (if there are to be members), and attend to such other matters as the board may determine. N.J.S.A. §15A:2-9. Bylaws are critical to the corporation as they govern its internal procedures and operations. Certain of the Act’s provisions on governance and operations are mandatory. However, the majority are written to provide a general corporate form for the conduct of the entity’s activities; drafted to permit for variations and modifications from the form to the extent the particular corporation may agree upon in its organizational documents, subject only to certain overriding interests of the State.

While the Act provides for the certificate of incorporation and bylaws as the main operating instruments for nonprofit corporations, in practice, a trend has evolved for a third critical document, the mission statement. The mission statement is without the legal formalities and technicalities of the other corporate organizational documents. The mission statement is often the public face of the organization - communicating to supporters, beneficiaries and the public at large a concise presentation of the essential purposes of the nonprofit.

## **Exemption from Federal Taxation**

Exemption from Federal income taxation is a privilege and not a right. In order to be eligible for such exemption, the entity must demonstrate compliance with the Internal Revenue Code of 1986, as amended (the "Code"), and its underlying regulations, and bears the burden of proving eligibility for exemption. Section 501(c) of the Code outlines a variety of types of entities which are exempt from taxation ranging from charitable foundations to social welfare organizations to political organizations to governmental entities. Section 501(d) of the Code relates to religious organizations which are beyond the scope of this publication. Entities qualifying under Section 501(c) are known as exempt entities, as they are generally exempt from Federal income tax.

The most recognizable form of tax exempt entities are charitable organizations, which are addressed under Section 501(c)(3) of the Code. A Section 501(c)(3) charity is defined as an entity "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." The Code further provides that no part of the net earnings of a charitable organization may inure to the benefit of any private individual, no substantial part of the activities may consist of carrying on propaganda or otherwise attempting to influence legislation (typically referred to as lobbying), and the organization may not participate in any political campaign for or against any candidate for public office (referred to as electioneering).

The significant effect of being classified as a charitable organization under the Code is that, in addition to being exempt from Federal taxation, charitable status permits it to accept tax-deductible charitable contributions. In other words those individuals or corporations making contributions to such entities are eligible to claim a deduction on their Federal income tax returns in connection with cash or in-kind contributions made to charitable organizations.

In order to qualify as a charitable organization under the Code, the entity must meet both the organizational and operational tests. The organizational test requires that the entity be organized "exclusively" for one or more permissible exempt purposes, whereby the entity's certificate of incorporation and bylaws must identify its exempt purpose(s) and, upon dissolution, its assets must be dedicated to an exempt purpose. To satisfy the operational test, an entity will be regarded as "operating exclusively" for one or more exempt purposes if it engages "primarily" in activities to accomplish the purposes identified in Section 501(c)(3) of the Code. The Code does accommodate certain activities by organizations which are unrelated to the exempt purposes, as long as they are insubstantial.

A critical aspect of Federal exemption is that the entities serve a public, rather than a private, interest. In recent years, Congress has paid particular attention to the issue of private insiders inappropriately benefiting from their association with charitable organizations. These instances of private inurement are referred to as excess benefit transactions. Congress has enacted intermediate sanctions to penalize both the insiders who engage in such transactions and those board members approving such transactions.

The Code divides Section 501(c)(3) charitable organizations into two classes, namely private foundations and public charities. Most organizations are presumed to be private foundations unless they notify the Internal Revenue Service (the "IRS") that they are not. In order to be a public charity, an entity must qualify under one of the specific categories of exclusion under the Code. Several categories relate to the nature of the organization, such as churches, educational organizations such as a schools or colleges, hospitals or medical research organizations operated in conjunction with a hospital, endowments for the benefit of state and municipal colleges and universities, or governmental units. If the entity is not able to achieve public charity status by virtue of the nature of its organization, it must be what is referred to as a "publicly supported organization." The underlying concept of a publicly supported organization is that a minimum percentage of its support must be broad-based rather than from concentrated sources. This is measured by the one-third support test, which refers to the fact that one-third of the total support for the organization is "qualifying public support." Public support is that which comes from the general public, the government and other publicly supported nonprofit organizations. While all public support is included in the calculation of the total support, there are limits as to how much of such contributions are treated as "qualifying public support" (i.e., no more than 2% percent of the organization's total support). Given the presumption of being a private foundation, those failing to meet these tests will be characterized as private foundations for Federal tax purposes. Such entities maintain the benefit of exemption from Federal taxation and the ability to provide the benefit of a tax deduction to contributors, but private foundations are subject to more restrictive rules than public charities.

## **Application for Recognition of Exemption**

Typically, after a nonprofit corporation has filed its certificate of incorporation and attended to its corporate organizational matters, a filing is made with the IRS in order to request recognition of exemption from federal taxation. The application process provides for submission of required forms which vary depending upon the subsection under Section 501(c) of the Code applicable to the organization. Further, for Section 501(c)(3) organizations, the application gives the entity the opportunity to prove that it qualifies as a public charity as opposed to a private foundation. If the application is acceptable to the IRS, a letter of determination will be issued to the organization recognizing its exemption. Such letter often serves as the basis for the entity seeking exemption or relief from certain state or local taxes. The Code provides for ongoing compliance necessary in order to maintain exempt status, including recordkeeping requirements and filing of annual informational returns or electronic notices in the case of small charitable organizations.

## **New Jersey Charities Registration and Certain Other Filings**

Upon filing of a certificate of incorporation for a nonprofit corporation, the New Jersey Department of Treasury provides a copy of such filing to the Office of the Attorney General, which refers the matter to the New Jersey Division of Consumer Affairs (“DCA”). Pursuant to the Charitable Registration & Investigation Act of 1994, all charities must file initially and annually with the Charities Registration Section of the DCA. The Charities Registration Section’s purpose is to protect the public from fraud and deceptive practices in charitable fundraising. Thus, the annual filings required of charities provide for financial disclosures to be available to the general public. Professional fundraisers are also required to make annual filings, and all contracts between charities and professional fundraisers must be in writing and filed with the Charities Registration Section. The obligation to file such contracts is upon both the fundraiser and the charitable organization. To the extent funds are solicited in other states, comparable filings may also be required.

Charitable organizations and professional fund raisers based, operating or soliciting within New Jersey must register with the Division of Consumer Affairs Charities Registration Section unless specifically exempted under the provisions of the Charitable Registration and Investigation Act (N.J.S.A. 45:17A-18 et seq.) also known as the “CRI Act.”

The CRI Act requires that each registration statement must be submitted with the required registration fee; be signed by two (2) officers of the charity, and include all applicable attachments and additional information pertinent to registration. All registered charities must renew their registration on an annual basis within six months following their fiscal year-end. Extensions of time to file may be requested by charities with gross contributions greater than \$10,000 (see further details below).

## New Jersey CRI Act

The CRI Act permits charitable organizations receiving annual gross contributions of \$10,000 or less to choose whether or not they wish to maintain a registration with the N.J. Charities Registration Section, but no longer requires them to do so. Charities at this level of gross contribution income who choose to maintain a registration are now required to pay a \$30 registration fee (N.J.A.C.13:48-2.1(a)1) and may no longer be granted extensions of time to file (N.J.A.C. 13: 48-3.4(h)).

However, charitable organizations choosing to claim the above new exemption and remain unregistered must register within thirty (30) days of exceeding \$10,000 in gross contributions within any given fiscal year.

The 2011 changes related to the regulations also changed the threshold for when a charity must provide a certified audit from total gross income of \$250,000 to \$500,000. The certified audit requirement applies to Long Form Registration filers only.

### Initial Registration

To register your organization for the first time, you must complete either the CRI-200 Short Form or the CRI-150I Long Form:

- If your organization raised **more than \$25,000** in gross contributions in its last fiscal year, or if it contracted with a professional fund raiser, Form CRI-150I and CRI-150IC (with addendum) must be submitted.
- If your organization raised **less than \$25,000** in gross contributions in its last fiscal year, or if the organization is a bona fide veterans' organization, Form CRI-200 (with addendum) may be used to initially register the organization. Initial registrations must include copies of the organization's: by- laws, articles of incorporation, IRS determination letter and the most recently filed IRS Form 990. If you are unable to produce any of the initial registration materials, please state the reason in a cover letter to be submitted with your initial registration package.

### Annual Renewal Registration

Registered charities must renew their registration on an annual basis. A charity's renewal registration is due within six months after its fiscal year-end.

- If your organization raised **less than \$25,000** in gross contributions or if your organization is a bona fide veterans' organization, Form CRI-200 Short Form should be completed, signed and submitted with a copy of the IRS Form 990 for the fiscal year-end being reported (if required by the IRS).
- If your organization raised **more than \$25,000** in gross contributions or if it had contracts with a professional fund raiser, the CRI-300R Long Form Renewal Registration must be completed, signed and submitted with a copy of the IRS Form 990 for the fiscal year-end being reported(if required by the IRS).

## **Certified Audit Requirement**

If your organization is a Long Form filer, and had received over \$500,000 in total gross revenue during the fiscal year being reported, a certified audit must be prepared and submitted with the initial and/or annual renewal registrations. The certified audit requirement does not apply to Short Form filers.

## **Registration Fees**

All filers must pay a registration fee. Charitable organizations that are no Longer required to register (N.J.S.A. 45:17A-26c) but choose to do so anyway, must pay a \$30 registration fee (N.J.A.C. 13:48-2.1(a)1). Registration fees are as follows:

### **CRI-200 Short Form Filer's Fees**

raising less than \$10,000 = \$30  
raising between \$10,001 and \$25,000 = \$30

### **CRI-150I and CRI-300R Long Form Filer's Fees**

raising between \$25,001 and \$100,000 = \$60  
raising between \$100,001 & \$500,000 = \$150  
raising more than \$500,000 = \$250

**Please note: registration fees are based on gross contributions, not total gross revenue.**

## **Late Fee**

Registration renewals filed after the due date must include a late fee of \$25. The late fee amount is the same for all filers, regardless of the form being used or the gross contributions being reported.

## **Payment Methods**

Fees may be paid by check or money order only and should be made payable to the "New Jersey Division of Consumer Affairs." Please write the charities registration number on all checks and documents being submitted.

## **Registration Due Date**

Annual renewal registrations are due six months after the charity's fiscal year-end closing.

## **Extension of Time to File the Registration Renewal**

Although registration renewals are due six months after the charity's fiscal year-end, charities whose gross contributions exceed \$10,000 may request an extension of time to file. The request should be made using form CRI-400 (if available) or by submitting a letter to the N.J. Charities Registration Section. The request for an extension must include the charity's name, charities registration number, the fiscal year-end for which the extension is being requested and the valid reason for the extension request. The letter (or form CRI-400) must be postmarked by the original due date of the registration renewal and must be accompanied by the registration fee due.

**Please note:** due to recent changes in the CRI Act, charities whose gross contributions are less than \$10,000 can no longer be granted an extension of time to file and should file their registration renewals by the original due date. If late, the filing should be accompanied by a \$25 late fee.

### **Registration Forms**

Please be sure to have the newest version of the form you will be using to register or renew, and:

- Complete, sign and submit the Registration Form
- Fee Payment
- Provide an IRS Form 990 and a Certified Audit (as required by income level)

Please check the Web site again each year to be certain you are using the most up-to-date registration form available. For your convenience, the following registration forms (with addenda) may be downloaded.

- Form CRI-200 Short Form Registration/Verification Statement <http://www.njconsumeraffairs.gov/charity/cr200s.pdf>  
(Initial & Renewal Registrations)  
For organizations whose Gross Contributions do not exceed \$25,000 for the completed fiscal year being reported.
- Form CRI-150I Long Form Initial Registration Statement <http://www.njconsumeraffairs.gov/charity/cr150fo.pdf>  
Form CRI-300R Long Form Renewal Registration Statement <http://www.njconsumeraffairs.gov/charity/cr300r.pdf>  
For organizations whose gross contributions exceed \$25,000 and/or used a paid professional fund raiser for the completed fiscal year being reported.
- Form CRI-400 Extension Form <http://www.njconsumeraffairs.gov/charity/cr400.pdf>  
Charity Registration Extension Form. For requesting an extension of time to file a charity renewal registration statement and financial report for charitable organizations only.

# **An Overview of Nonprofit Board Responsibilities**

## **Responsibilities of the Board**

The primary responsibility of the board of any corporation, whether profit or nonprofit, is to oversee the operations of the organization to assure effective governance and management. A nonprofit organization revolves around proper governance; this includes ensuring that the provisions of the organizational documents are carried out and providing for the election of officers, hiring an Executive Director and staff, and the establishment of committees to assist in carrying out the board's functions. In the case of a business corporation, one of the Board of Directors' primary responsibilities is to maximize profits for the benefit of the shareholders. Conversely, the trustees of a nonprofit corporation are not acting for private benefit, but rather in pursuit of the organization's purpose, which is essentially a public purpose. While fiscal oversight and financial responsibility are critical roles of any type of governing body, the board of trustees of a nonprofit is often also charged with hands-on responsibility to engage in fundraising activities for the benefit of the organization. Equally important, the Board of Directors must manage and maintain its core values, and rely on its members' collective wisdom and foresight to carry out the organization's intended mission.

As a result of high-profile scandals in the private sector over the past decade and the enactment by Congress of the Sarbanes-Oxley Act of 2002, boards have been called upon to improve their management and corporate governance, including closer scrutiny on self-dealing transactions and compensation-related issues, and the enactment of codes of ethics and business conduct. The Act sets forth the standard of care required by trustees and members of board committees; that they shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinary, prudent persons would exercise under similar circumstances in like positions. The provision in the Act mirrors that in the New Jersey Business Corporation Act, and both are a codification of the historical principles that the duties of care and loyalty guide actions of boards. In carrying out such responsibilities, the trustees must have a clear understanding of the organization's purposes and mission. In order to effectively support the carrying out of such purposes and mission, the board members must stay involved and informed as to matters affecting the entity. This is to be accomplished by regular attendance at meetings, transcribing of board minutes, keeping apprised as to financial status of the organization and reviewing, and insuring receipt of, information and documents critical to the operations of the organization. To the extent that the organization engages in grant making activities, the board is often responsible for monitoring that the grants are awarded to organizations within the purposes outlined in the mission statement. In addition, to the extent that the organization is funded by grant funds, the board must provide oversight to insure that the funds are in fact used in accordance with any restrictions imposed by the grant.

While Sarbanes-Oxley is only required for public companies, the basic tenets and principles of Sarbanes-Oxley have worthwhile implications for the nonprofit sector.

Generally, Sarbanes- Oxley seeks to:

- Increase investor and shareholder confidence in public reporting and reduce aggressive financial reporting
- Ensure effective internal controls surrounding financial reporting
- Reduce fraud and increase accountability for expenses
- Ensure the board of directors is independent from the company
- Increase accountability of the executive team for financial reporting and information disclosed to the market

To a certain extent, nonprofit organizations must adhere to an even higher standard than public companies, as the public at large, and third party recipients of the nonprofit's mission are causing the board and the executive director to live in a fish bowl.

It is imperative that trustees exercise independent judgment in making corporate decisions, and that such judgment be exercised with full disclosure to the entire board of any personal interest or other facts or circumstances which may give rise to a perceived or actual conflict of interest. A special position of trust among a board demands avoidance, recognition or transfer of conflicts of interest. In the case of the intermediate sanctions imposed by the IRS for excess benefit transactions, organizational managers may be liable for excise taxes to the extent that they have approved an excess benefit transaction.

It is best practice for all organizations, whether for profit or not, to have a well-developed audit committee. The audit committee performs the unique role within a nonprofit organization of proactively overseeing the organization's financial and compliance reporting and disclosure process. The audit committee should be entrenched in the control environment and areas where fraud may occur. While management is held accountable for the validity and accuracy of the financial statements, the audit committee monitors and analyzes information from the Chief Financial Officer, the internal auditor, the external auditor and the Executive Director. The audit committee must be knowledgeable in the organization's operating procedures and business risk model. To that point, it is most important for the audit committee to establish a "tone at the top", setting an example of integrity and ethical financial reporting decision making.

The Journal of Accountancy outlines "Eight Habits of Highly Effective Audit Committees"

- Define the audit committee's mission by drafting a charter
- Outline specific competencies audit committee members must possess
- Active participation among all members is essential
- The committee is able to interview anyone it chooses
- An agenda should be planned prior to each meeting
- Decision-making processes should be logged and detailed
- At the beginning of each meeting, review the minutes from the prior meeting
- At the end of each meeting, summarize it

Aside from nonprofit corporations with members, nonprofit boards are self-perpetuating; the existing trustees are responsible for insuring that the board is equipped to continue to carry out the organization's purposes and mission. This involves periodic self-evaluation by the board as to its continued objectivity, vitality and suitability to adapt to the organization's evolving needs. An aspect of board involvement is the constant effort to both conduct internal assessments and recruitment to identify productive and contributing board members. At times, this is manifested by rotation of board members on and off boards or effectuated with staggered board terms. Orientation of new board members is critical to insure that they become familiar with the obligations of board members in general, as well as the particularities of the mission statement, and are integrated into the board and committee structures.

### **What is the “Reasonable Person” Standard?**

Widely cited in United States legal precedent, the reasonable person's philosophy is:

- Prudence is the guide
- Look before you leap
- Record details in all financial dealings
- Scrupulously follow process
- Rely on knowledge of experts when needed
- Investigate action taken as exhaustively for the organization as one would for one's own life
- Seek a firm and objective basis for knowledge and governance (e.g., the truth)  
You need to apply a standard of “reasonableness” – of what is fair and just.

The reason is simple, the term “fiduciary responsibility” is misunderstood by many who serve on nonprofit boards.

Contrary to popular understanding, “fiduciary” does not merely refer to financial responsibility. The term fiduciary means, “Of, relating to, or involving, confidence or trust; owing another the duty of good faith.”

This obviously extends far beyond the world of finance alone.

There are six basic area of governance for which a nonprofit board, and, therefore each individual board member, is ultimately responsible.

- 1) Strategic Planning: determining the nonprofit's mission and purpose, approving overarching goals and objectives of all programs, monitoring achievements and outcomes against those established goals.
- 2) Financial Accountability: ensuring that the nonprofit is properly managed that financial control systems are in place, and that proper judgment is used in all business and financial transactions.

- 3) Fund Development: identifying and approving fund development goals and plans participating in fundraising activities, especially in the cultivation and solicitation of individual donors.
- 4) Public Relations: enhancing the public image of the organization.
- 5) Appraising the Executive Director: selecting, supporting and conducting an annual performance review of the Executive Director.
- 6) Maintaining the Board: selecting, recruiting and nurturing new board members, developing and reviewing the performance of board members, assessing its meetings and its own performance as a board.

In order to accomplish these duties, board members need to understand that there are four distinct “roles” they can play in their nonprofit organization:

1. Board members govern the nonprofit by making policies in partnership with staff
2. Board members actively fundraise on behalf of the nonprofit
3. Board members provide free advice when asked by management on business and programmatic areas within their expertise
4. Board members volunteer in the service delivery of the organization

What role a board member plays at any given time may vary depending upon the stage of development of the nonprofit organization. For example, an organization in its early stage of development – or to use the terminology of Karl Mathiason of the Management Assistance Group in Washington, D.C., the “Phase of Creativity” – may require that board members spend much of their time playing roles two through four above, and spend less time on the first role. An organization that has a more established staff and infrastructure will require that board members concentrate on the first two roles above. Thus, while all roles are important, emphasis changes with the developmental life cycle of the nonprofit organization.

One of the more novel contributions to board theory of the last decade has been from John Carver, a board consultant from Indiana. In watching what most boards actually do, Carver observed that many board members feel their major job is watching over, scrutinizing and approving organizational behavior. Staying on top of things is, of course, important in managing or governing anything. But, Carver contends, a big mistake is made if we believe that “watching over” and “approving” are the central responsibilities of a governing board. They are not. The central function of a governing board is to lead, according to Carver. “Watching over” and “approving” are not leading. They are, however, crucial activities for ensuring that board committees, staff and volunteers are, in fact, following the dictates and directions of the leading body.

Thus, the board must first identify and clarify those dictates and directions. This is done through the setting of goals and objectives. As Carver says, “Board governance is about creating the future, about carving what can be out of what is, and about creating community by linking leadership to leadership.”

Once a governing board has done its job of leading, it is then ready to monitor, as it now has the objectives by which to judge. The clearer a board is about what it wants; the easier it is to tell if that goal has been achieved. Following this line of reasoning, then, strategically planned outcome goals are the most important part of a governing board's work. Outcome goals identify the dream—the desired and ultimate impact the organization wishes to achieve. Outcome goals are usually found in the mission statement and overarching goals of a strategic plan.

When the board meets as a whole body to lead and govern, the focus of board governance meetings needs to be devoted to the long term. Meetings need to be primarily concerned with creating the future, rather than passively reviewing the past. The focus is external (i.e., what has changed out there? What is our positioning in the community and how do we compare to other similar organizations? How will that trend affect our ability to provide services?) and not internal. To facilitate this process, some organizations have turned to using a strategic agenda as opposed to the traditional agenda. Whereas a traditional agenda is simply a series of seemingly disconnected reports from individuals and committees, a strategic agenda is organized topically around the strategic goals a board has identified. In this model, committees and individuals report piecemeal on their work as it relates to a particular strategic topic on the agenda.

Board governance results in policy making. However, it is not always clear to board members how to make policy or what a policy actually is. Policies are ways for nonprofits to set limits and to develop systems for how things should be done within the organization. Policies serve as management guidelines so that when implemented, they accomplish the day-to-day running of the organization without constant board approval or interference. By Webster's dictionary definition, policies are "A definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions."

There are several levels of policies:

**Major** policies are always a board governance responsibility. They deal with questions such as: "What is our mission?"; "To what ends are we working?"; "What is going on out there and how will it impact our organization?" and "How does something align with our values and key operating principles?"

**Secondary** policies and **functional** policies are a shared governance and management responsibility. They deal with areas including "Who do we serve and with what range of services?"; "How do they access our services?"; and "How much money will it cost and how will we get it?"

**Minor** policies, **standard operating procedures** and **rules** are a management responsibility, including areas such as, "How do we do this on a daily basis?"; "What's the process for that?" and "What rules need to be instituted?"

To be effective, policies should be developed with staff, approved by the board, distributed to everyone affected by them, consistently enforced, regularly reviewed and updated, and be consistent with by-laws, mission, and articles of incorporation.

Today, many boards are doing a good job in assuming their responsibilities to plan strategically, appraise the executive director, oversee financial accountability and even help raise funds (generally, the least liked responsibility, and therefore, often the least assumed!). There is, however, one area of responsibility where boards appear to be falling short. Boards need to be better at both monitoring their own activities and accomplishments and developing board members and leadership succession plans. Recent research suggests that boards that engage in periodic self-assessment and reflection are stronger, healthier organizations. Thus, boards should be sure to do the following:

- Set boundaries through job descriptions for the board as a whole
- Establish board committees and committee chairs; include individual board members and the executive director. (The executive director is responsible for other staff job descriptions, but may ask the board for input.)

**Make sure the board has enough people doing the right things.** This means that the Board Development Committee must develop and maintain profiles of what the board should ideally “look like” compared to what it is and then it must identify the discrepancies. This requires that the Board Development Committee looks closely at the organization’s purpose and strategic goals, and then reflects on the qualities, skills, experiences, interests, relationships, and connections that board members need to bring to the board room. Asking each board member to write and sign a letter of agreement annually that identifies just what it is he/she can commit to that year is one way of introducing a level of accountability. This letter will also help to identify gaps on the board that will need to be filled.

**Make sure the content and process of its board meetings are appropriate and meet the needs of the board.** From time to time, the board needs to take a few moments to answer the following questions, and then decide to make the necessary modifications:

- Are our board and committee meetings effective? Should we change our agenda style to a strategic agenda, consent agenda or reverse agenda (an agenda that moves the routine, reporting pieces of the agenda to the end and brings to the front the work that requires creative and high energy levels, such as new business)?
- Are we talking about the right things?
- Are we making major policy or meddling and micro-managing?
- Do we have too much / too little / enough information to make informed decisions?
- Is there too much / adequate discussion and participation?
- Is committee work done in committee, and recommendations and outcomes brought to the board for approval, or is the board redoing the work of the committee?
- Are overarching issues discussed by the full board?

In sum, a board can and must help the nonprofit if the nonprofit is to thrive. Board members must be committed to the mission. They must participate by asking questions and analyzing answers and they must participate in everything from decision making to fundraising to support the nonprofit. As Karl Mathiason says, "A board is not a simple mechanism to be kept running smoothly by an occasional oiling. On the contrary, a board is a complex organism, requiring care and nurture to make it effective." In the best nonprofits, a healthy governing board provides a strong competitive advantage that is well worth the effort needed for its creation and maintenance.

Does your board actively shape policies that are best for your organization, or simply try to fit your organization into someone else's politically correct mold?

*Truth is the biggest driver of change....*

### **Board Policies: Audit Committee vs. Finance Committee**

#### **WHAT'S THE DIFFERENCE?**

#### **AUDIT COMMITTEE VS. FINANCE COMMITTEE**

<b>AUDIT COMMITTEE</b>	<b>SHARED RESPONSIBILITIES</b>	<b>FINANCE COMMITTEE</b>
The audit committee is authorized to consider matters related to (a) the financial statements of the organization and other official financial information provided to the public	The finance committee ensures that budgets and financial statements are prepared; the audit committee has oversight for ensuring that reports are received, monitored, and disseminated appropriately	The finance committee shall oversee the preparation of the annual budget and financial statements
(b) the systems of internal controls, including overseeing compliance by management with applicable policies and procedures and risk management (e.g., for organizations that are part of a national network, annually reviewing whether the organization meets the re-chartering requirements of its national organization)	The finance committee monitors financial transactions; the audit committee makes sure things are done according to policy and with adequate controls	The finance committee shall oversee the administration, collection, and disbursement of the financial resources of the organization
and (c) the annual independent audit process, including the recommended engagement of and receiving of all reports from the independent certified public accountants. The audit committee shall have such other duties as may be delegated to it by the board	The finance committee provides guidance about what can be done; the audit committee ensures that independent oversight occurs	The finance committee shall advise the board with respect to making significant financial decisions

## **Fraud and the Responsibilities of the Audit Committee: An Overview**

Fraud can be very costly to all types of organizations, including nonprofit organizations. According to the Association of Certified Fraud Examiners (ACFE), U.S. organizations lose an estimated seven percent of annual revenues to fraud. Their research also indicates that there is anecdotal evidence that fraud at nonprofit organizations may be even higher. This is due to the fact that nonprofit organizations are not implementing the most effective fraud controls, such as whistle-blower hotlines and management review of financial statements, and are focusing their resources on the least effective fraud controls. The cost of fraud not only includes the financial cost, but also costs such as damage to the organization's reputation, potential loss of donors or other resource providers, loss of management and board expertise, and many other nonfinancial costs.

The ACFE defines occupational fraud as:

The use of one's occupation for personal enrichment through deliberate misuse or misapplication of the employing organization's resources or assets.

The audit committee also needs to be aware that fraud affecting the organization often falls within one of the following three categories:

Management fraud, which involves senior management's intentional misrepresentation of financial statements, or theft or improper use of an organization's resources.

Employee fraud, which involves nonsenior employee theft or improper use of an organization's resources.

External fraud, which involves theft or improper use of resources by people who are neither management, nor employees of the firm.

This categorization of fraud is useful, but not absolute. Middle management employees may intentionally misrepresent financial statement transactions, for example, to improve their apparent performance, or outside individuals may collude with organization management or employees.

### **Roles of the Audit Committee in the Prevention, Deterrence, Investigation, and Discovery or Detection of Fraud**

The members of the audit committee should understand their role of ensuring that the organization has antifraud programs and controls in place to help prevent fraud, and aid in its discovery if it does occur, to properly fulfill their fiduciary duties of the following:

1. Monitoring the financial reporting process
2. Monitoring the internal control system
3. Overseeing the external audit and internal audit functions
4. Reporting findings to the board of directors
5. Monitoring and overseeing the whistle-blower policy and hotline

The audit committee should ensure that the organization has implemented an effective ethics and compliance program, and that it is periodically tested. Because the occurrence of significant frauds can frequently be attributed to an override of internal controls, the audit committee plays an important role to ensure that internal controls address the appropriate risk areas and are functioning as designed.

Internal auditors and external auditors can serve a vital role in aiding in fraud prevention and deterrence. Internal audit staff and external auditors that are experienced and trained in fraud prevention and deterrence can help to provide assurance that (1) risks are effectively identified and monitored, (2) organizational processes are effectively controlled and tested periodically, and (3) appropriate follow-up action is taken to address control weaknesses. The audit committee needs to ensure that internal and external auditors are carrying out their responsibilities in connection with potential fraud.

## **Whistle-Blowers**

According to the ACFE, the most effective method for detection of fraud has historically been tips. In many cases, these tips are obtained through the use of whistle-blower policies and hotlines. Nonprofit organizations must establish procedures for the receipt, retention, and treatment of complaints received by the organization regarding accounting, internal accounting controls, or auditing matters; and the confidential, anonymous submission by employees of the organization of concerns regarding questionable accounting or auditing matters (Sarbanes-Oxley Act of 2002.) In many organizations, the audit committee is significantly involved monitoring the whistle-blower process. The audit committee chair or the entire committee may be involved in the primary investigation and review of the whistle-blower complaints and reporting. In addition, some organizations have designated the audit committee chair or an audit committee member as the individual who initially receives whistle-blower reports.

## **When Fraud Is Discovered**

Fraud can be discovered through many sources, namely, internal or external auditors, forensic accounting consultants, employees, vendors, and others. Establishing a confidential hotline can also be an important source of information leading to fraud discovery, as part of an organization's overall ethics, compliance, and fraud prevention program. Although a confidential hotline is something that could be accomplished internally, a variety of outside service providers can be engaged to provide this service for the organization.

If fraud or improprieties are asserted or discovered, the audit committee—through the external auditors, internal auditors, or forensic accounting consultants, as appropriate—should investigate, and, if necessary, retain legal counsel to assert claims on the organization's behalf. Forensic accounting consultants, in particular, may be needed to provide the depth of skills necessary to conduct a fraud investigation and, if it is desirable, to get an external assessment.

If fraud is discovered or there is a reasonable basis to believe that fraud may have occurred, the audit committee is responsible for ensuring that an investigation is undertaken. Criteria should be in place describing the audit committee's level of involvement, based on the severity of the offense. Most audit committees will also want to obtain information about all violations of the law and the organization's policies.

Forensic accounting consultants can also frequently provide audit committees with other related advisory services, namely, (1) evaluations of controls designs and operating effectiveness through compliance verification, (2) creation of special investigation units, (3) incident management committees, (4) disclosure risk controls, (5) ethics hotlines, (6) code of conduct, and other antifraud measures.

The audit committee can engage the audit firm to carry out a forensic or fraud investigation. If CPA forensic accountants are engaged by the organization's general counsel, rather than the audit committee, they may potentially attain attorney-client privilege status, not otherwise available under normal circumstances.

## **Insurance and Risk Management**

Included in this chapter are the key elements needed for protecting your nonprofit organization. These elements will provide information you need, so that you make good decisions regarding your insurance purchases. The primary goal is to create a process for the continuous functioning of your organization in the event of insurance or a financial loss.

Some of your insurance purchases are required by state law while others are based on contractual requirements and risk management objectives.

### **A. Commercial Property**

The commercial property insurance is designed to protect your nonprofits building(s) and personal property.

### **B. Computer EDP**

Computers and other electronic data processing equipment and media will be protected with this insurance endorsement. Covered items include data processing equipment, data processing media (i.e., DVDs, CDs, diskettes, tapes, etc.), and reproduction of data. Extra expense and business interruption can be included to reimburse your nonprofit organization for expenses that occur as a result of damage or loss to the insured items.

Some policies can even be written or tailored to include the resulting damage and loss as a result of a computer virus.

When considering this type of coverage you need to know if this is included in your business personal property limit. You should make certain that all of your nonprofit's computerized equipment, such as laptops, telephone systems and copiers are covered. Leased computers, copiers and telephone systems can be covered under this type of coverage for your organization.

## **C. Inland Marine**

An inland marine policy covers exposures that involve property and merchandise while in transit or “floating.” Valuable papers and documents, as well as mobile equipment and other supplies are also covered by this type of policy.

An inland marine policy should consider inclusion of the following coverages:

### **Business Income**

The business income policy, also known as business interruption, is designed to help cover potential losses resulting from an interruption of normal business. Business income lost due to an insured peril, often exceeds in cost the damages to your real and personal property. Extra expenses incurred because of interruption, can also be insured. The cost to enable your nonprofit organization to carry on its mission at another location is covered while your existing site is being repaired or rebuilt.

### **Boiler & Machinery**

Boiler and machinery insurance protects your organization in the event of sudden and accidental mechanical equipment failure or damage of a covered object, which results in financial loss to your organization. It covers losses to your insured property as well as the property of others. In the event an insured object causes an “accident”, the boiler and machinery policy would pay for damage and repair of property, excluding any subsequent fire related damage, which would be covered by your property insurance policy.

Boiler and machinery coverage is recommended and is included on many property forms automatically or via an endorsement on some property forms.

## **D. Business Auto**

The business auto policy is designed to protect your nonprofit organization in the event of accident, theft, injury and other damages involving your vehicles and your employees while driving your nonprofit’s autos. Even if you own no autos or trucks, you have an exposure to a potential claim.

Business auto policies might consider inclusion of the following coverages:

### **Hired Car Liability**

This coverage provides protection against damages when an employee is held liable for negligence while driving a vehicle being used under contract or borrowed by your organization. Third party claims are paid up to the stated policy limit.

### **Drive Other’s Car**

This coverage protects your employees, or other specified individuals, when they are held liable for damages while driving a borrowed auto for personal use. This endorsement, which also covers the spouse of the employee, is normally purchased for the executives or officers of the nonprofit organization.

### **Non-Owned Auto**

This coverage will protect your nonprofit organization in the event of negligence by an employee which occurs while they are driving a non-owned company vehicle such as their own personal auto while performing job related duties. Third party claims are paid up to the stated policy limit. The bookkeeper going to the bank to make a deposit who gets into an accident is a typical example that can result in a claim covered by this coverage.

## **E. Crime-Combination**

The combination crime policy is designed to protect your nonprofit group in the event of loss due to burglary, robbery, fraud or employee dishonesty. Some people think of this as “BONDING” your employees.

Crime policies might include the following protection:

### **Computer Fraud**

This coverage protects your nonprofit organization against loss resulting from malicious misuse of your computer system with the intention of financial gain by an individual or group, or with the intent to cause loss of property, monies or securities.

### **Employee Dishonesty**

This coverage will protect your nonprofit organization in the event fraudulent or dishonest acts are committed by an employee who results in loss of money, securities, or property. This coverage is also known as a “fidelity bond.”

### **Extortion**

This coverage protects against loss due to the extortion (kidnap) of an insured employee or family member in exchange for ransom, whereas the individual(s) or property is subject to damage or harm.

### **Forgery or Alteration**

This insurance coverage protects your nonprofit organization in the event of forgery or alteration of your organizations business checks, promissory notes, drafts, consignments, or similar documents. An attached endorsement can protect against loss due to incoming documents, if so requested.

## **F. Directors and Officers Liability & Employment Practices Liability Insurance**

This policy will protect your officers and directors in the event they are held liable for damages caused by error, mismanagement, negligent acts, misleading statements, omission, or any other wrongful act that results in financial loss to others.

An organization reimbursement (or corporate indemnification) endorsement will reimburse a named insured director or officer for expenses incurred while defending against suits claiming wrongful acts committed.

This element of protection is NOT covered under any other policy form. It is essential that this coverage is purchased by your nonprofit organization to protect and indemnify your board members. This is an essential element in order to attract and retain quality board members. They need these protections since without this coverage they would be personally liable for their actions while on the board.

The EPLI policy can cover your nonprofit group in the event of a claim that may include: wrongful dismissal, discharge or termination, breach of written/oral/implied employment contract, employment misrepresentation, failure to promote, violation of employment discrimination law, deprivation of career opportunity, wrongful discipline, negligent employee evaluation, invasion of privacy, defamation, sexual or workplace harassment of any kind, constructive discharge, retaliation and humiliation, wrongful demotion, negligent reassignment, federal, state, and local civil rights and the punitive damages that might result.

Coverage can be tailored to include third party liability and those employees that are leased.

## **G. General Liability Coverage**

This policy provides payment in the event of a “liability” loss that causes injury or property damage. It protects your nonprofit against liabilities that arise from your daily operations, the products you sell, or the services you render.

### **Employee Benefits**

This coverage would protect your nonprofit organization in the event it was held liable for claims arising from your employee benefits program. In the event of loss due to improperly counseling plan participants, handling records carelessly, failing to enroll or terminate employees, or improperly interpreting coverage, you would be covered up to the stated limit.

### **Premises/Operations**

This coverage protects your nonprofit organization in the event of loss due to bodily injury or physical damage arising from ownership, maintenance or any use of the insured premises. It also covers the operations performed by your group.

### **Personal Injury**

This coverage protects your nonprofit organization in the event of “injury” due to: false arrest, detention, imprisonment or malicious prosecution; libel or slander; defamation of character; wrongful eviction or entry, or invasion of the right of private occupancy privacy. This coverage is enforced when you are held liable for damages.

### **Fellow Employee**

This coverage would protect employees when named as negligent in a claim filed by a fellow employee, for damages resulting from a work related injury. While Workers’ Compensation protects your nonprofit organization, an individual employee has no protection. This endorsement protects that individual employee in the event of suit.

## **Additional Persons Insured**

This endorsement extends your policy to include your employees as a Named Insured while acting within the scope of their work related duties.

## **Host Liquor Liability**

This coverage protects your business when held liable for loss or damage that occurs due to the serving of alcoholic beverages at a function deemed incidental to your operations.

It is necessary for you to amend your host liquor liability to schedule specific events when you are required to obtain a permit for a temporary liquor license.

If liquor is being served for a cost; coverage for your nonprofit needs to be secured and your current policy needs to be amended or a special events policy needs to be purchased.

## **H. Workers' Compensation**

State law requires every employer to provide Workers' Compensation insurance for its employees. Benefits are paid to employee's who suffer a work related injury. A percentage of expenses are paid for lost wages, medical expenses and permanent disability or disfigurement.

The policy we recommend consists of the following coverages:

### **Dividend Plan**

This plan of coverage bases your final premium on the size of your standard pre-paid premium and the actual losses experienced throughout the policy year. This can result in reimbursement or dividend payment back to your nonprofit organization.

### **Broad Form All States**

This endorsement provides Workers' Compensation insurance to an employee working outside of your domiciled state.

This coverage includes all states, except those monopolistic states specifically excluded by the policy.

### **Employer's Liability**

This coverage protects your nonprofit organization in the event you are held liable for injuries suffered by an employee and the employee bypasses the benefits provided under your state Workers' Compensation law and brings suit against your organization under common law. These limits should be no lower than \$500,000 and your umbrella or excess policy can be written to provide additional protection over these limits.

### **Managed Care or Rate Deviations**

Some carriers offer a discount off of the filed rates and may be able to offer discounts if your nonprofit qualifies. Managed care means that you receive a discount when you utilize the doctors in the network they provide.

## Forms to be Filed and How to Obtain Them

### FEDERAL FORMS

Forms Distribution Center  
P.O. Box 85074  
Richmond, VA 23261-5074  
(800) TAX-FORM (1-800-829-3676)

All Forms: Via Fax 1-973-368-9694  
All Forms: Via E-mail  
[www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html)

### STATE FORMS - NEW JERSEY

New Jersey Division of Consumer Affairs  
Charities Registration Section  
124 Halsey Street – 7th Floor  
Newark, NJ 07102  
(973) 504-6200  
[www.state.nj.us/oag/ca/charity/charfrm.htm](http://www.state.nj.us/oag/ca/charity/charfrm.htm)

New Jersey Division of Taxation  
Regulatory Services Branch  
PO Box 269  
Trenton, NJ 08695-0269  
(609) 292-5994  
(800) 829-3676 to request forms and publications  
[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

### Where to Mail the Forms

#### FEDERAL FORMS

Mail to:  
Forms W-3 and W-2's:  
Social Security Administration  
Data Operations Center  
1150 E. Mountain Drive  
Wilkes-Barre, PA 18769-0001

Forms 941 & 940EZ – if no tax is due with return:  
Department of the Treasury  
Internal Revenue Service  
Cincinnati, OH 45999-0005

Form 941 if tax is due with 940(V):  
Internal Revenue Service  
PO Box 804522  
Cincinnati, OH 45280-4522

Form 940-EZ if tax is due with 940-EZ(V):  
Internal Revenue Service  
PO Box 804522  
Cincinnati, OH 45280-4522

Forms 990:  
Internal Revenue Service  
Ogden, Utah 84201-0027

### NEW JERSEY STATE FORMS

Mail to:  
New Jersey Division of Consumer Affairs  
Charities Registration Section  
124 Halsey Street – 7th Floor  
Newark, NJ 07102  
(973) 504-6200  
<http://www.state.nj.us/oag/ca/charity/charfrm.htm>

### Where to Obtain Additional Information

#### FEDERAL FORMS

Internal Revenue Service  
General Information  
(877) 829-5500, TE/GE Division, Customer Service  
P.O. Box 2508  
Cincinnati, OH 45201  
[www.irs.gov](http://www.irs.gov)  
Tax Information for Charities & Other Nonprofits  
[www.irs.gov/charities/](http://www.irs.gov/charities/)

#### NEW JERSEY STATE FORMS

New Jersey's Business Registration  
and Commercial Recording Services  
General Information  
(609) 292-9292  
[www.state.nj.us/njbgs/](http://www.state.nj.us/njbgs/)

New Jersey Division of Consumer Affairs  
Charities Registration Section  
124 Halsey Street – 7th Floor  
Newark, NJ 07102  
(973) 504-6200  
[www.state.nj.us/oag/ca/charity/charfrm.htm](http://www.state.nj.us/oag/ca/charity/charfrm.htm)

Center for Nonprofit Corporations  
1501 Livingston Avenue  
North Brunswick, NJ 08902  
(732) 227-0080  
[www.njnnonprofits.org](http://www.njnnonprofits.org)

### Requirements of New Employers

New employers must have a Federal Identification  
Number. Application is made by filing Form SS-4.  
Apply to:

Internal Revenue Service  
600 Arch Street  
Philadelphia, PA 19106  
[www.irs.gov](http://www.irs.gov)  
1-800-839-1040

## **Helpful Web Sites**

### **Center for Nonprofits**

3575 Quakerbridge Road, Suite 102  
Mercerville, NJ 08619  
732 227 0800 fax: 732 227 0087  
[www.njnonprofits.org](http://www.njnonprofits.org)

The Center for Nonprofits is New Jersey's state association of nonprofits. For more than 30 years since its founding in 1982, the Center has been, and remains, New Jersey's only umbrella organization for all charities in the state.

### **The Chronicle of Philanthropy**

1255 Twenty-Third Street, N.W.  
Seventh Floor  
Washington, D.C. 20037  
202-466-1200  
FAX: 202-466-2078  
<http://philanthropy.com>

The Chronicle of Philanthropy is the No. 1 news source, in print and online, for nonprofit leaders, fund raisers, grant makers, and other people involved in the philanthropic enterprise. For more than 20 years, The Chronicle has been connecting the nonprofit world with news, jobs, and ideas.

### **Charity Navigator**

1200 MacArthur Boulevard, 2nd Floor  
Mahwah, NJ 07430  
(201) 818-1288, Fax: (201) 818-4694  
[www.charitynavigator.org](http://www.charitynavigator.org)

Charity Navigator touted as America's premier independent charity evaluator, works to guide intelligent giving. They help charitable givers make intelligent giving decisions by providing information on over 5,400 charities and by evaluating the financial health of each of these charities. They ensure their evaluations are widely used by making them easy to understand and available to the public free of charge.

## **National Center for Charitable Statistics**

2100 M St, NW  
Washington, DC 20037  
(866) 518-3874  
nccs.urban.org

The National Center for Charitable Statistics (NCCS) is the national repository of data on the nonprofit sector in the United States. Its mission is to develop and disseminate high quality data on nonprofit organizations and their activities for use in research on the relationships between the nonprofit sector, government, the commercial sector, and the broader civil society.

For information and technical assistance for local 990-NACs please contact:

### **Local 990-NAC Project Office**

c/o National Society of Fund Raising Executives  
1101 King Street, #700  
Alexandria, VA 22314  
Phone: (800) 666-3863  
E-mail: [form990@nsfre.org](mailto:form990@nsfre.org)  
[www.qual990.org](http://www.qual990.org)

For information about National 990-NAC, please contact:

### **The National Center for Charitable Statistics at the Urban Institute**

2100 M Street, NW  
Washington, DC 20037  
Phone: (202) 833-7200  
E-mail: [NCCS@ui.urban.org](mailto:NCCS@ui.urban.org)  
[www.qual990.org](http://www.qual990.org)

The Quality 990 ([qual990.org](http://qual990.org)) web site encompasses a number of projects and activities to improve the quality of IRS Form 990 reporting by nonprofit organizations. [www.dol.gov/elaws](http://www.dol.gov/elaws)

Elaws Advisors help you understand your rights and responsibilities under the employment laws and regulations administered by the Department of Labor (DOL).

### **The Management Assistance Program for Nonprofits**

2314 University Avenue West, Suite 28  
St. Paul, MN 55114-1629  
General phone: (651) 647-1216, Fax: (651) 647-1369  
[www.mapfornonprofits.org](http://www.mapfornonprofits.org)

The Management Assistance Program for Nonprofits' web site contains the Free Management Library, a complete, highly integrated library of resources for nonprofit and for-profit businesses.

## **CompassPoint Nonprofit Services**

San Francisco Office  
731 Market Street, Suite 200  
San Francisco, CA 94103 USA  
General Info: (415) 541-9000  
[www.compasspoint.org](http://www.compasspoint.org)

Providing nonprofits with the management tools and concepts necessary to best serve their communities. Web site contains “The Nonprofit Development Library” which is free to the public, with over 900 books, 15+ periodicals, and Internet access to help nonprofit staff & volunteers find the fundraising and management information they need.

## **GuideStar.com**

Philanthropic Research, Inc.  
[www.guidestar.org](http://www.guidestar.org)

GuideStar is a national database of information on nonprofit organizations produced by Philanthropic Research, Inc., a 501(c)(3) public charity founded in 1994. The mission of the organization’s web site is to “revolutionize philanthropy and nonprofit practice with information.” You can look up detailed results, financial, and programmatic information on most nonprofit agencies.

## **Nonprofit World Magazine**

[www.nonprofitworld.org](http://www.nonprofitworld.org)

Nonprofit World is a bi-monthly magazine – published since 1983 – that provides busy nonprofit leaders with concise and practical articles whose advice can be easily implemented. In addition to current issues, members also receive access to an online archive of over 700 searchable and printable articles dating back to 1996 – an indispensable resource for any nonprofit leader or board member.

## **National Executive Services Corps**

[www.nesc.org](http://www.nesc.org)

The vision of recruiting and deploying seasoned executives, managers, entrepreneurs and other accomplished professionals to help nonprofit organizations led to NESC’s establishment in 1977. And that vision drives NESC today.

There is no typical NESC Consultant. Generally, though, their 250 consultants have been executives and managers from CEOs of large and small organizations, to all levels of management in such businesses as banking, real estate, consumer products, merchandising, accounting, publishing, public relations and advertising.

## **Disclaimer**

This guide has been designed to present business and tax information of a generalized nature for nonprofit organizations. The information expressed herein should be regarded as indicative and for illustrative purposes only. It is not designed to provide legal, tax, regulatory, accounting or other advice. The information is not designed to reflect appropriate procedures or advice that should be followed in any particular set of circumstances; the information herein should not be acted upon without prior consultation with appropriate professional advisors.

Each contributor to this guide has individually prepared his or her portion of the guide. No contributor is responsible for the content prepared by the other contributors.

# Educational Certification Programs

CENTER FOR EXCELLENCE  
LEADERSHIP, GOVERNANCE AND PHILANTHROPY CERTIFICATE PROGRAMS

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LEADERSHIP CERTIFICATE**

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AND RESOURCE  
DEVELOPMENT CERTIFICATE**

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### DID YOU KNOW...

New Jersey's 30,000 nonprofit, 501(c)(3) organizations employ over 300,000 workers – nearly 10% of the state's private sector workforce – with over 1.5 million New Jersey residents volunteering annually (Center for Non-Profits).

**Recent studies have shown that over 50% of current nonprofit executive directors expect to move on from their positions in the next five to seven years.**

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To fill this growing and critical need to create today's high performing and tomorrow's emerging leaders, the FDU Center for Excellence - Governance, Leadership and Philanthropy (the Center) offers Certificate Programs in the key areas of nonprofit management.

**Enrolling yourself or a member of your company at the Center will...**

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#### **Career Coaching**

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### NOURISH your organization.

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AND REGISTER FOR UPCOMING COURSES**

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# **Information about the Authors and Sponsors**

Since 1956, Sobel & Co. has set the standard in serving nonprofit serving nonprofit organizations. We currently work with more than 185 nonprofit and social service organizations, delivering the services and solutions they need to survive and thrive.

We have accomplished this by offering a combination of specialized technical skills, industry credentials and an ongoing commitment to remain at the cutting edge of the nonprofit and social services sector.

Our impeccable credentials, responsive professionals and proven track record ensures that our clients receive the highest level of service possible delivered by a dedicated team with a depth of industry experience.

To ensure our clients' success, we work closely with their Boards of Directors, audit and finance committees and executive directors. In doing so, we make sure they receive accurate and timely financial reports and, as importantly, relevant and practical strategic advice.

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At Sobel & Co., we know our nonprofit clients have unique requirements based on the specific demands and regulations of their industry.

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- ✓ ***Personal attention and high level partner commitment to all client relationships***
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Founded in 1919 by David T. Wilentz, Wilentz, Goldman & Spitzer, P.A. (“Wilentz”), today has approximately 150 attorneys, with offices in New Jersey, New York City, Philadelphia and Pittsburgh. WG&S is one of the largest law firms in the State of New Jersey. Among the professionals at WG&S are a former justice of the New Jersey Supreme Court, and former Superior Court judges, judicial clerks, prosecutors and deputy state attorney generals. WG&S has been at the forefront of numerous landmark cases and precedent-setting decisions, and continues to be involved in drafting important legislation.

WG&S is a full service firm providing legal expertise in a broad range of areas, such as corporate and business law, securities, commercial and public finance, land use, environmental, construction, real estate, redevelopment, intellectual property, technology, healthcare, tax, utilities, commercial litigation and appellate practice. WG&S provides the legal services and advice to a broad range of clients in both the public and private sector, including a variety of nonprofit organizations, charitable family foundations, governmental entities and boards.

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For further information about Wilentz, please visit [www.wilentz.com](http://www.wilentz.com).

For assistance, please contact Brett R. Harris, Esq. at (732) 855-6122 or Peter R. Herman, Esq. at (732) 855-6046.



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TD Bank, America's Most Convenient Bank, is a member of TD Bank Financial Group of Toronto, Canada, a top 10 financial services company in North America and one of just three triple-AAA-rated banks on the New York Stock Exchange.

For further information, please contact Call Don Buckley for Northern New Jersey, Nick Miceli for Central New Jersey, Jim Kiernan for Monmouth through Cape May Counties or Rob Curley for Southern New Jersey at **1-888-751-9000**.



Founded in 1976, Semple Bixel Associates, Inc. provides fundraising strategies and campaign management for gift-supported institutions. Our reputation is built upon designing tailored programs in concert with volunteer leadership to meet the needs of nonprofits, especially those embarking on their first capital campaign. As a firm it is our mission to increase resources. We achieve this by training, mentoring and providing the best possible advice. SBA manages campaign goals ranging between \$500,000 to \$25 million for small to mid-sized nonprofit organizations.

SBA directs planning studies, manages capital campaigns and conducts workshops. SBA senior consultants are all experienced in conducting feasibility studies, development program assessments, strategic planning, board training, and direction of major campaigns. Further, SBA designs and directs workshops, board retreats, and places fundraising executives in the nonprofit project sector.

SBA works with all types of nonprofit groups, including education, healthcare, environmental, religious and arts. Please view our website at [www.semplebixel.com](http://www.semplebixel.com)

OFFICE:

653 Franklin Avenue  
Nutley, NJ 07110  
(973) 284-0444 (phone)  
(973) 284-0950 (fax)

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The Center for Nonprofits is New Jersey’s state association of nonprofits. For more than 30 years since its founding in 1982, the Center has been, and remains, New Jersey’s only umbrella organization for all charities in the state.

The champion and first-stop resource for and about New Jersey nonprofits

The Center helps thousands of nonprofits every year – tracking trends, advocating on nonprofit issues, providing legal and management expertise and timely information. We specialize in the issues that are common to the broad cross-section of nonprofits, enhancing and complementing the work organizations do in their own fields. Because the Center is keeping watch on these broad issues, individual nonprofits are free to focus more on their own goals, saving time and money in the process.

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For more information about the Center and how membership can add value for your organization, visit [www.njnonprofits.org](http://www.njnonprofits.org), or call the Center at 732-227-0800.

Linda M. Czipo, Executive Director  
Center for Nonprofits  
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[www.linkedin.com/company/center -for-nonprofits](http://www.linkedin.com/company/center-for-nonprofits)

Established in 1979, the Community Foundation of New Jersey is an alliance of families, businesses and foundations that work together to create lasting differences in people's lives and communities.

Our mission is to support charitable giving that is inspired by our donors, targeted at making our communities stronger, driven by creative solutions, and effective in achieving lasting change. We have a network of affiliates in Newark, Mercer, Monmouth and Morris Counties, and in South Jersey.

Through a combination of Legacy Funds and Donor Advised Funds, the foundation has granted an average of more than \$25 million each year to charitable organizations and currently stewards over \$250 million in charitable assets for current needs and future challenges.

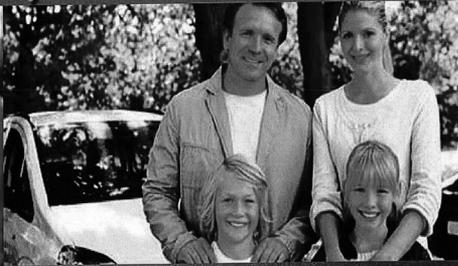
Nonprofits and donors are encouraged to contact the Community Foundation of New Jersey anytime at 973-267-5533 with questions.

Hans Dekker, President  
Joyce F. Jonat, Program Officer  
Community Foundation of New Jersey  
35 Knox Hill Road  
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