



WHAT'S INSIDE

403(b) Plans Face New
Filing Requirements

Nonprofit Notes

You May be Hearing From
Your Auditor



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A NEWSLETTER FOR NONPROFIT DECISION MAKERS

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A WHISTLEBLOWER POLICY

Three Reasons You Should Have One

It's the stuff of Hollywood gangster movies—the despised snitch, the dirty rat. But in the real world, whistleblowers serve a valuable purpose, especially for nonprofits. Increasingly, nonprofits are taking a cue from corporate America and adopting whistleblower policies, which provide a confidential means for staff and board members to bring questionable practices to light. Is it time your organization considered such a policy?

Reason #1: It's Just Good Practice

David Siehoff, partner, certified fraud examiner and member of Wolf & Company's *Not-for-Profit Group* says, "Charitable organizations suffer a disproportionate level of employee fraud when compared to other entities. In fact, the Association of Certified Fraud Examiners notes that 14 percent of all frauds occur at nonprofits. The median loss? \$109,000 per incident."

The reasons are varied, but generally reflect the unique nature of nonprofits. Operating with a lean and low-paid staff, nonprofits can't always segregate duties and create the checks and balances typically effective in deterring fraud. And all-volunteer boards may not have the time or the will to provide adequate oversight.

Whistleblower policies rely on a simple truism: The people closest to the day-to-day workings of an organization are the ones most qualified to identify and report malfeasance. Experience has shown that these individuals will step forward if they are provided with a confidential means of reporting abuses and feel that they will be protected from retaliation, including loss of their job.



Establishing and following sound whistleblower policies also provides critical liability protection in the wake of Sarbanes-Oxley. The government has aggressively prosecuted cases of retaliation against whistleblowers by organizations and individuals. Accordingly, whistleblower systems are now considered a best practice and are recommended for all public charities by organizations such as the Council on Foundations and Independent Sector.

Reason #2: The IRS Is Asking

Utilizing the revised Form 990, the IRS will soon be asking specific questions about your organization's governance and management practices, including whether you have a written whistleblower

403(b) Plans Face New Filing Requirements



“Does your organization offer a 403(b) tax-sheltered annuity to employees? If so, you may be required to comply with new IRS filing and audit requirements,” says Karen Courney, partner at Wolf & Company LLP.

Until recently, 403(b) plans were exempt from Form 5500 reporting and audit requirements. But recent amendments to Department of Labor regulations mean that ERISA-covered 403(b) plans are now subject to the same reporting and audit requirements as 401(k) plans. These changes are effective for taxable years beginning after December 31, 2008.

Size Matters

In general, if your 403(b) has 100 or more participants, you'll need to file audited financial statements for the plan. Smaller plans (fewer than 100 participants) may be eligible to use abbreviated reporting forms without having to file audited financial statements.

Questions to be Answered

In addition to becoming familiar with a host of new reporting and audit requirements, your organization will

need to determine the answers to some fundamental questions.

Do we have proper records? To prepare your plan's required financial statements, you'll need to establish a proper set of financial books and records, including the following:

- Contribution and disbursements records
- Individual participant account balance records
- Investment schedule
- A general ledger and trial balance

Start by contacting your plan's service provider and ensuring that it will be able to provide you with the information needed for your plan's Form 5500.

Are participant records complete and accurate? Here, it's important to realize that “plan participants” include employees who are eligible to participate in the plan but decline participation as well as former employees/beneficiaries who have balances remaining in the plan. You may need to take steps to track down the records of former employees.

Do we have a current plan document and investment policy? An up-to-date plan document should cover issues such as eligibility, benefits, distribution availability and other limitations, as well as information relating to the annuity contracts or custodial agreements used by the plan. Your investment policy should describe the types of investments the plan can make and the appropriate authorizations for investment transactions.

What comparative data will we need? In the initial reporting year, plans that require an audit will need to include comparative financial information from the 2008 plan year. This information includes the current value of plan investments, as well as

employer contributions owed to the plan, accounts payable and accrued expenses through the end of the plan year. Plan in advance to obtain this information.

Do we have proper controls? Effective policies and processes — both within your organization and your plan's service provider — are critical. Ask your service provider if it will be making available a SAS 70 report on the internal controls established to process your plan's transactions. Also, you should perform a review of your own internal controls over the plan.

Who will do the work? Will your plan's financial statements and Form 5500 be prepared inhouse or by a CPA firm? If your plan meets the audit requirement (i.e., 100 or more participants) you'll need to select an independent auditor, preferably one with prior experience working with employee benefit plans, to provide an unqualified opinion on the plan's financial statements. Note that it will be important to coordinate the work of all professionals engaged during the process.

In The End ...

Your organization may face significant challenges in meeting these new 403(b) plan requirements. But in the end, the process will help ensure the financial integrity of the plan while helping you carry out your legal responsibility to file a complete and accurate annual return each year. ■

Whether you need the services of an independent auditor or simply help filing your plan's Form 5500, you can turn to the experienced professionals in our office. For more information call Karen Courney at 630-545-4511.

policy. (You'll be asked if you have other policies, including a written conflict of interest policy and a written document retention/destruction policy.) The new Form includes 16 schedules that may have to be prepared depending on the activities conducted by your organization (e.g., enhanced compensation disclosures, board review of Form 990 and other inquiries regarding governance).

But, is a nonprofit required by the Internal Revenue Code to have a whistleblower policy on the books? No, however, the IRS has been very clear in its reasons for the disclosure requirement. In essence, the IRS believes that your answers will provide an indicator of whether your organization is operating in compliance with their opinion of best practices.

Reason #3: The Public Is Watching

In this digital age, your organization's Form 990 can be viewed by donors and the public at large. In fact, Form 990 is now the most commonly used data source about nonprofits. The bottom line: The revised Form 990 asks your organization to publicly share its management and governance practices. Savvy nonprofits are using Form 990 to demonstrate responsible stewardship and sound policy to an increasingly skeptical public.

What You Can Do

Encourage your board of directors to adopt an effective whistleblower protection policy (note that your board will need to have any policies approved and in place by the end of your fiscal year in order to answer "yes"). It doesn't have to be complex, and you don't need to reinvent the wheel. At its most basic, it simply needs to establish a process for reporting suspected breaches in ethics or illegal/inappropriate activity without fear of retaliation. While the policy should be tailored to your organization's unique needs, these basics should be included:

Who is covered – Typically, a whistleblower policy covers an

organization's directors/trustees, officers and employees. Some also include volunteers, grantees, contractors and/or vendors.

How to report – Describe the process for reporting suspect activity (i.e., who to contact, how to submit a concern). Smaller organizations may simply designate one or two trusted members, such as the president/CEO, the board chair and/or the audit committee chair, to act as compliance officers. Larger nonprofits can opt for the director of human resources, the general counsel, etc. Organizations of any size can choose to designate someone outside of the organization (such as outside legal counsel). Some organizations contract with outside vendors to operate a confidential hotline.

Investigation – Identify the individual who will lead investigations, including a back-up in case a complaint involves that person. Describe how suspected violations will be investigated, including a maximum turnaround time and timelines for acknowledging receipt of the reported violation.

Confidentiality – While complete anonymity can hinder an investigation and is not generally advised, some degree of confidentiality should be promised to anyone making a report.

Consequences – Make it clear that your policy is based on the premise of people acting in good faith (i.e., reporting concerns that they have reason to believe are true). Your policy should contain consequences for bad-faith allegations that are later proven to be false.

Retaliation – A key component of your policy should be a firm assurance that good-faith reports of suspected abuse will not result in any adverse consequences. Also, spell out the consequences for anyone caught harassing, intimidating or otherwise retaliating against the person behind the complaint.

Put It To Work

It's not enough to simply type up a policy. Review it thoroughly at a board

meeting and make it part of orientation for staff, board member and volunteer orientation. Consider posting it on your website. Assign a staff member who will review the policy periodically.

To view examples of policies, go to <http://councilofnonprofits.org/?q=whistleblower> and <http://smartgivers.org/AccountabilityWizard.html>. For details on federal laws relating to whistleblowers, visit <http://www.onlinelawyersource.com/whistleblower/index.html>. ■

For more information call Dave Siehoff at 630-545-4503

New Form 990: When it Will Apply

Following its first major revision in nearly 30 years, the new IRS Form 990 is set to go into effect for the 2008 tax year, affecting returns due May 15, 2009, or after. For the 2008 tax year, will your organization have:

- *Annual gross receipts over \$1 million or total assets over \$2.5 million?*

You will be required to file the new Form 990. Note that for the 2009 tax year, the thresholds for filing Form 990 drops to \$500,000 in gross receipts or \$1.25 million in total assets. The filing thresholds will be set permanently at \$200,000 gross receipts and \$500,000 total assets beginning with the 2010 tax year.

- *Less than \$25,000 in annual gross receipts?*

You can file an e-Postcard (Form 990-N), which requires only basic information such as the organization's name, mailing address, Web site address, employer identification number and annual tax period. Starting with the 2010 tax year, the threshold for filing Form 990-N will increase from \$25,000 to \$50,000.

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Nonprofit Notes

You May be Hearing From Your Auditor

If your organization is undergoing a financial statement audit this year, you should be hearing from your auditor – and that's not necessarily a bad thing. Modern auditing standards now require certain ongoing, two-way communication between the auditor and your audit committee or board of directors on such topics as:

- Significant findings from the audit.
- Difficulties encountered in performing the audit.
- Observations arising from the audit that apply to your financial reporting process.
- Any "significant deficiencies" or "material weaknesses" in your

organization's internal control as it relates to your financial reporting. (For example, a lack of appropriate segregation of duties created by staff vacancies or turnover could qualify as a material weakness.)

Steps You Can Take

Get everyone ready. Auditors will require information not only from the accounting department but from senior management, board members and even your membership.

Identify potential deficiencies. Meet with your auditors to identify deficiencies that may meet the new reporting threshold as "material weaknesses" or "significant deficiencies."

Communicate. Schedule periodic conference calls between the audit committee chair and the audit firm

to discuss audit status and issues. Designate a point person to review misstatements discovered during test procedures, discuss control deficiencies and approve the draft financial statements and notes.

Prepare for SAS 115. An additional accounting standard, Statement of Auditing Standards (SAS) 115, will be in effect for audits of financial statements for periods ending on or after December 15, 2009 – although early implementation is encouraged. In essence, SAS 115 tightens the definition of material weakness and significant deficiency. ■

Our firm can guide you through the auditing process. For more information call Jody Gauthier at 630-545-4502.