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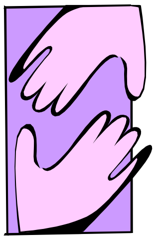

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A Newsletter For Nonprofit Decision Makers — spring 2008

Compliance Update

Form 990 Redesign Poses Challenges

On Dec. 20, 2007, the Internal Revenue Service released the newly revised Form 990. The redesign is the first in decades and substantially changes the way nonprofits report on finances, leadership, activities and governance. The take-home news is that these new reporting requirements will affect almost all nonprofits — and may very well require organizations to change their accounting systems and governance practices.

When It Will Apply

Organizations must begin using the new Form 990 for the 2008 tax year (returns filed in 2009). The current Form 990 must be used for the 2007 tax year (returns filed in 2008).

The IRS announced a graduated transition period for smaller nonprofits, which will be allowed to file the Form 990-EZ instead of the Form 990. For the 2008 tax year, organizations with gross receipts over $1 million or total assets over $2.5 million will be required to file the Form 990. For the 2009 tax year, the thresholds drop 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. Also, starting with the 2010 tax year, the IRS will increase the filing threshold for organizations required to file Form 990-N (the e-postcard) from $25,000 to $50,000 (see sidebar).

What Changed

One of the goals of the Form 990 revision is for nonprofits to report all information directly on the core form and schedules, rather than including separate attachments. The 2008 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 new form). Additional changes include the following:

Summary page — A summary page at the beginning of the new Form 990 is intended to provide a snapshot of your organization's activities and finances, including basic information about revenue, 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 redesigned Form 990, you will report revenues and functional expenses

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Insurance Tips and Traps

"Are we covered for that?"

"They're the words every nonprofit leader dreads," says Karen Courney, partner, Wolf & Company LLP. Because the insurance requirements of nonprofits are so different from commercial businesses, public agencies and even your own personal insurance needs, it's critical to learn about the insurance trips and traps your organization faces.

General Liability

The most common nonprofit liability policy is the commercial general liability (CGL) policy, which covers against claims for bodily injury (someone suffers an injury), property damage (someone's property is damaged) and personal injury (someone is libeled, slandered, defamed or maliciously prosecuted).

Tip: ***Get enough coverage***. In today's legal climate, a $1 million per claim and $1 million in the aggregate limit is considered the entry-level limit for a CGL policy.

Tip: ***Cover your volunteers.*** While a nonprofit's employees are insured within the definition of "who is an insured," volunteers may not be. Consider telling your broker you want coverage for volunteers as an insured. Without this endorsement, your volunteers must depend on their own resources or their homeowner's insurance for protection.

Trap: ***Abuse/molestation.*** Some insurers exclude liability from allegations of sexual abuse or molestation. If your agency serves children, the elderly or the infirm, specific abuse coverage might be important.

Vehicles and Autos

If your nonprofit owns any vehicles, you need a Business Auto Policy (BAP) to cover the vehicles for auto liability and physical damage.

Tip: Cover non-owned vehicles. If you have employees and volunteers who use their own vehicles, consider purchasing hired and non-owned auto liability coverage. This protects the organization (not the driver or vehicle owner) when the person is acting on behalf of the organization (such as going to the bank or attending a special event).

D&O Liability

A Directors and Officers (D&O) policy protects the organization, its directors, officers, employees and volunteers for their "wrongful acts" in governing and managing the organization (e.g., allegations of breach of duty, errors and omissions, and other acts that cause harm to the organization or its stakeholders).

Tip: ***Establish proper limits.*** The recommended base limit is $1 million per claim/$1 million in the aggregate, unless your organization is very small. Higher limits are appropriate if you believe your exposure is greater than average, or if board members are uncomfortable serving in the absence of higher limits.

Tip: ***Cover your publications.*** If your nonprofit publishes a newsletter, magazine or other marketing materials, consider a D&O policy that includes publishers' liability and personal injury. This provides broader coverage than a general liability policy for libel, defamation, copyright or trademark infringement.

Workers' Compensation

If you have full-time or part-time employees, your state law likely requires that your nonprofit have a workers' compensation policy.

Tip: ***Cover employment practices.*** If you have employees, make certain that your D&O policy includes employment practices liability (EPLI) coverage — employment-related claims (e.g., wrongful termination, harassment, etc.) are the most common type of D&O claims filed against nonprofits.

Trap: ***Be wary of covering volunteers***. In some states, volunteers can be added to your nonprofit's workers' comp policy. But injuries to covered volunteers could affect your "experience rating," increasing your workers' compensation premium. An accident insurance policy may be a better way to protect volunteers.

Property Insurance

A commercial property policy covers the property (furniture, fixtures, office equipment, stock, etc.) that the nonprofit owns.

Tip: ***Review deductibles.*** A low deductible can cost you in higher premiums. Investigate deductibles of $1,000, $5,000 or more and simply consider small losses a "cost of business" paid for out of operating funds. Leave the insurance company to handle the debilitating claims.

Trap: ***Not covering computers.*** If your nonprofit owns any computers or electronic equipment, consider a computer or electronic data processing policy, which offers broader coverage such as loss due to power surges, hard-drive crashes and possibly viruses.

Smart Steps

Find an insurance agent who has experience working with nonprofits, and then meet with him or her at least once a year to review your coverage (shoot for four months before your policy expires). Ask for a summary of coverage and losses. Then, talk about where your organization has been and where you plan to go in the near future. ■

For more information please contact Karen Courney at 630-545-4511.

somewhat differently. Many of the new reporting categories differ from standard nonprofit accounting classifications and may require revising your accounting systems and software. The new form requires nonprofits to break down contributions, gifts and grants into categories of:

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

You must also comply with the following changes:

- Utilize several new 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 five percent of total expenses.

Note also that all nonprofit organizations that report on a GAAP basis are subject to FIN 48. If there are FIN 48 liabilities accrued, the exact language that is put on the footnote is required to be duplicated on Schedule D of the new Form 990.

Compensation — In general, compensation of officers, directors and key staff is included in Part VII of the new Form 990, along with Schedule J, Supplemental Compensation Information. Some of the key differences 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 increased from $50,000 to $100,000.
- Compensation figures must be taken from Form W-2 or Form 1099.

Governance and Operations — You will now be required to disclose certain organizational 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 document retention destruction policies in place.

In addition, you'll be asked to describe in Schedule O 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 new Form 990 makes three major changes:

1. You will now need to report direct revenue related to each of your three largest program services in addition to reporting program service 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.
2. You must describe your three most significant program service accomplishments on the core form as opposed to submitting attachments with more detailed information.
3. You must describe (in three lines) your most significant program service accomplishment for the year.

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. "Make sure you carefully review the revised reporting requirements to ensure that you are in full compliance," says Dave Siehoff, partner, Wolf & Company LLP. You may also want to encourage the board of directors to review the completed Form 990 prior to filing. ■

For more information please contact Dave Siehoff at 630-545-4503.

Smaller Nonprofits Also Face Reporting Changes

Beginning in 2008, nonprofits with less than $25,000 in annual gross receipts will be 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 $25,000.

An organization that fails to file Form 990-N for three consecutive years will automatically have its tax-exempt status revoked. Accordingly, it is critical that responsible officers of small nonprofits implement procedures to ensure that the Form 990-N filings are completed. ■

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Nonprofit Notes

Lessons from SOX: Conflict of Interest Policies

A valuable lesson from the landmark Sarbanes-Oxley legislation is that nonprofits, just like publicly traded companies, need to maintain trust, integrity and transparency in all they do.

One visible way to do so is by creating a carefully written conflict of interest policy and asking each board and staff member to agree in writing to uphold the policy. Then, institute a system of checks and balances to circumvent actual or potential conflict of interest, beginning with well-defined operating policies on all matters that might lead to conflict. Finally, review the policies regularly as part of board self-assessment.

What Should Be Included?

A well-crafted conflict of interest policy should cover these three crucial areas:

1. Full disclosure — Board members and staff members in decision-making roles should make known their connections with groups doing business with the organization.

2. Abstention — Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group.

3. Decision-making — Staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions.

The IRS has published a suggested conflict of interest policy included in the instructions for completing Form 1023 (the Application for Exemption under Section 501(c)(3)). This detailed and comprehensive policy is published starting on page 25 of http://www.irs.gov/pub/irs-pdf/i1023.pdf. ■

If you would like to receive future newsletters electronically, please email your request to gina.riberto@wolfco-fs.com