Vol. 17, No. 1, January/February 2008

Nonprofit Risk Management Center
… find the answer here

Risk Management ESSENTIALS

Tips, Knowledge and Tools for Nonprofit Organizations

The Center Has Moved

The Nonprofit Risk Management Center opened its doors in the historic district of Leesburg, Virginia, in January 2008 after 17 years in our nation's capital. Our new location offers easy access to Dulles International Airport for our road warrior staff and out of town visitors. As part of our move, and with generous support from the Travelers Foundation we upgraded our telephone and IT systems to enable us to better serve you in the years ahead. The benefits of this transformation will be evident as we unveil new products and services in 2008.

New Address:
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New Year, New List

Five Risk Management Resolutions for Your Nonprofit

By Melanie L. Herman

During a recent airline trip I opened the in-flight magazine and saw an ad for an expensive piece of exercise equipment that promised an effective cardiovascular workout with only four minutes of effort. The longer I stared at the photo of the machine, the more it began to look like an elaborate clothes-drying rack. My cynicism aside, I eventually concluded that the reason for the morphing effect of the image was my own experience with home-based exercise equipment. After 15+ years of buying and discarding such equipment, I have concluded that my motivation to exercise comes from the fear that others at the crowded gym may be looking in my direction. I can't find the motivation to work out at home, but I'm easily motivated in a room of sweaty strangers.

What might this mean to a nonprofit leader looking for risk management wisdom at the beginning of a new year? First, ramping up the risk management program in your nonprofit doesn't require the investment of millions, but it cannot be accomplished in four minutes. Over-simplifying the need to revise outdated policies, hold staff accountable for key safety rules and commit risk management goals to writing is a recipe for inaction.

Second, experience is a free tool at your disposal. Use it! For me, past experience draping clothes over the

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…find the answer here

Blogs Are Here to Stay

It's time to update your policies

By Jennifer Chandler Hauge

Attendees at the 2007 *Summit for the Nonprofit Sector* in Winston-Salem heard a lot about the Internet and cyber-safety from plenary session speaker and national syndicated columnist Larry Magid as well as the Center's executive director, Melanie Herman. Both speakers addressed the risks arising from employees who blog.

An emerging trend in the employment arena is the need to discipline or terminate employees who blog derogatorily about the organization on their own site or on a nonprofit-sponsored site. The act of terminating an employee for inappropriate comments on a blog is called "doocing." The term comes from the name of an employee who was terminated for comments posted on her blog at www.dooce.com.

So why should we be concerned about blogging? Let's look at the potential risks to the nonprofit when employees blog:

- Blogs may contain gossipy, subjective content that is not necessarily based in fact, much like comments shared at the proverbial water cooler. Rumors spread quickly on the Internet. Search engines pick up on topics addressed in blogs and bloggers often comment on information originally posted by other bloggers, so material printed in one blog can end up on hundreds—many of which are regularly reviewed by reporters. In this way a rumor about a nonprofit can end up published in a newspaper, often before the nonprofit even knows about the rumor or has time to formulate an internal response for staff and stakeholders or a suitable response for the media.

- Employees who blog about their workplace may publish information that the nonprofit would not want to be made public. Examples include stories about donors, about fundraising events gone awry, about programs or services not yet made public, or even allegations or innuendoes of misappropriation of funds or improper treatment of restricted grants or government contracts.

- Bloggers have been known to post sexual content about co-workers, including photos, which may be embarrassing or hurtful and could be used in a harassment lawsuit against the nonprofit.

Prohibiting employees from blogging is not an option, and nonprofit employers need to be cognizant that blogs are not only here to stay but probably will become more prevalent. Some nonprofits have even incorporated blogging into their own communications strategies. Blogs by nonprofit CEOs, board chairs, and even celebrity spokespersons are not uncommon. So what risk management steps can nonprofit employers take to reduce the potential damage from blogs?

1. Consider implementing a blog policy that reflects your nonprofit's culture and specifically addresses unauthorized blog content.

2. If your nonprofit embraces blogging as a new technique to communicate, make sure that your Web policies provide a way for all content of any official blogs linked to the nonprofit's Web site to be reviewed by a designated staff member before being posted. Then, if unauthorized and derogatory postings are made without review, the nonprofit can prove its due diligence and is less likely to be held responsible. If the nonprofit has no such policy or procedure of reviewing content, it will be held responsible for all content posted on blogs linked to the nonprofit's Web site or authored by nonprofit employees on an official nonprofit blog.

3. Unless the blog is authorized and part of the nonprofit's communications strategy, there should be a prohibition against blogging during work hours and using the nonprofit's computers for this purpose. This prohibition could be incorporated into the nonprofit's existing technology policy that may already contain language prohibiting use of the nonprofit's computers for any non work-related use.

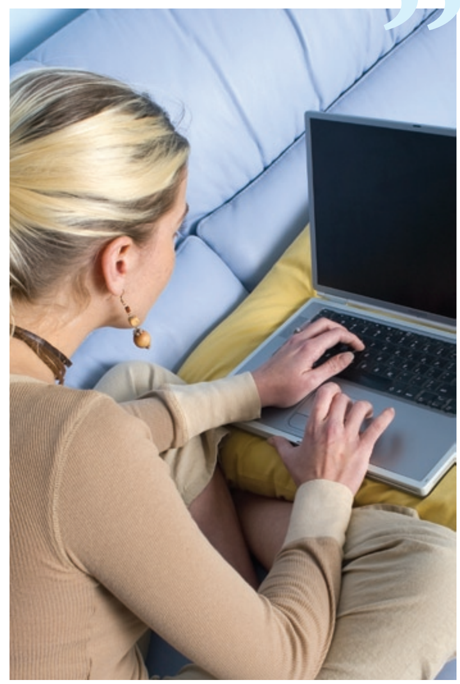
4. Alert employees that engaging in any activity, including posting material on the Internet that is detrimental to the nonprofit or is in conflict with the nonprofit's mission will be considered a violation of the employees' duty of loyalty to the nonprofit. In some states, (North Carolina is one), employers are specifically permitted to terminate an employee whose conduct outside of work conflicts with fundamental objectives of the nonprofit.

5. Inform employees that all blog communications regarding the nonprofit or its employees must comply with the organization's non-harassment policy and non workplace-violence policy. An employee whose posted comments violate the nonprofit's policies faces discipline up to and including termination.

In all but the smallest workplaces, bloggers are certain to exist. Before your nonprofit is caught off-guard and required to respond to unflattering or potentially damaging blog content, take proactive measures to guard what might be regarded as your most valuable asset: your reputation in the community you serve. Consider the steps above as a starting point to protect your nonprofit from potential misconduct by employee bloggers.

Jennifer Chandler Hauge is Senior Counsel and Director of Special Projects at the Nonprofit Risk Management Center. Jennifer welcomes your comments and feedback on the topics covered in this article. She can be reached at (202) 785-3891 or Jennifer@nonprofitrisk.org.

"Employees who blog about their workplace may publish information that the nonprofit would not want to be made public."



New Resources Emerge from Collaboration

A recent collaboration between ChoicePoint and the Nonprofit Risk Management Center has led to the creation of a *Risk Management ToolKit* for customers of ChoicePoint's state of the art background checking services.

As part of the company's continuing efforts to help nonprofits effectively manage risk, ChoicePoint has launched a new Web site and toolkit. The Nonprofit Resource Center (www.choicepoint.com/nonprofit) is part of a new suite of services that offers enhanced learning opportunities for ChoicePoint's nonprofit customers.

Through a partnership with the Nonprofit Risk Management Center, ChoicePoint's Risk Management Toolkit offers relevant white papers, best practices and in-depth risk management articles designed to educate a nonprofit just establishing risk management policies to those with mature programs who are seeking to refine their practices.

"In conversations with our clients, they wanted concise, easy-to-access information and resources they could use when developing or evaluating risk management, crisis communication or recruiting policies," said Ansley Jones Colby, vice president for ChoicePoint Cares and culture.

"ChoicePoint is

Making the case for risk management

This excerpt is provided with permission from ChoicePoint.

Mission, mission mission! The common thread that binds volunteers and staff is a commitment to the mission of the nonprofit. Risk management should be seen as a strategic step towards mission fulfillment. Risk management frees up—rather than consumes—resources that can be used to achieve the organization's mission.

Making the case for risk management begins with the board. A nonprofit's board not only establishes policies that govern operations, it models behavior for the nonprofit's paid and volunteer staff, clients and other constituencies. When a nonprofit's board attaches significance to a particular issue, it is likely that paid staff and other key players will follow suit. Through its actions and policies, the board can demonstrate a commitment to managing risk, rather than letting risks manage the nonprofit.

What if the board itself 'doesn't get it'? Here are some opportunities to introduce a board to risk management as a mind-set:

Budget Approval Process:

The board should be acutely aware of its legal Duty of Care to ensure that the nonprofit has adequate resources to achieve its mission. The budget process is the perfect time to remind the board (and staff) of the need for risk management in planning for unforeseen budget shortfalls. Plan a few minutes of the budget presentation to review ways in which the proposed budget protects or insulates the nonprofit from financial worse case scenarios.

Insurance Policy Renewal:

Well before it's time to renew the nonprofit's insurance policies, invite the nonprofit's outside insurance advisor (broker, agent, or other professional) to attend a board meeting and present a short overview of the nonprofit's insurance program and answer questions that the board may pose. Ask the insurance professional to point out any exclusions contained in the policies and to explain the retained risks (deductibles) and coverage limits.

Strategic Planning:

The board is probably familiar with the role of strategic planning to create a framework for avoiding unpleasant surprises in the future. Strategic planning with the goal of managing future risks is no different. Consequently, if a nonprofit is going through a strategic planning process, the board and staff have already conceded that a thoughtful approach to future planning is a good idea. Make sure that risk identification is part of the strategic planning brainstorming session and that action steps to address identified risks are included in the plan.

After a Loss or Near-Loss:

In the aftermath of a crisis or near-loss, board and staff may be more willing to absorb information that could have helped the nonprofit avert a loss or avoid an exposure. Rather than sweep a near-miss experience under the rug, use the experience to brainstorm what other, unexpected risks the nonprofit may yet face, and plan ways to address them. This is the 'shotgun wedding' approach to risk management—the board and staff may go to the altar begrudgingly, but are sure to take the vows.

Leadership Transition:

Often when a long-term executive director or other staff leader announces his/her resignation, the board approaches panic mode

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proud to partner with the Center, the leading authority in nonprofit risk management, on these new solutions allowing nonprofits to stay focused on protecting the people they serve."

The Center's executive director, Melanie Herman noted, "We were delighted to assist ChoicePoint in the design and delivery of the *Risk Management ToolKit*. The Toolkit addresses some of the most challenging topics facing nonprofit leaders, from effective governance to crisis management and cyber safety. These resource materials offer insightful commentary plus practical advice on a wide range of issues. ChoicePoint's customers will find the Toolkit invaluable as they address the critical risks facing their organizations."

The Toolkit will be updated with new papers, guides and best practice information quarterly. Select content such as white papers and research studies are available on the Resource Center.

The partnership is an example of how the Center—recognized for its expertise on risk management topics and ability to deliver high quality educational materials—works with large organizations that serve the nonprofit sector. "Our strategy is to work through large organizations to get practical resource materials in the hands and on the desktops of nonprofit leaders who yearn for insight and tools to address risk," adds Herman. "We regularly work with associations of nonprofits, large insurers, regional and national brokers, sponsored insurance programs, national federations of nonprofits and others in the design and delivery of helpful risk management tools tailored around the needs of nonprofits generally, or the needs of a subgroup in the sector, such as youth-serving agencies."

To inquire about partnering with the Center in the design and delivery of risk management resources to your members, insureds, affiliates or customers, contact Melanie Herman at (202) 785-3891 or Melanie@nonprofitrisk.org.

For more information about the services available from ChoicePoint, visit www.ChoicePoint.com, or contact: 1-866-399-6647, Option 2.

An example of one of the factsheets featured in the *Risk Management Toolkit* appears in the sidebar. ■

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and rushes to find a replacement with the mindset that losing XYZ is going to be a disaster. Actually, this is a good moment for the board and senior staff to step back and strategically think about how the transition of executive leadership of the organization will impact the nonprofit's overall operations, ability to raise funds, attract and retain great employees, and provide great programs. The board can come to see that leadership transitions pose not only risks but tremendous opportunities for strengthening a nonprofit's ability to withstand an unknown future. Seeing risk in a new light is helpful and going through the process of an executive leadership transition is often a logical stepping stone for a board's integration of risk management in its strategic thinking.

The following are suggested strategies for engaging board leaders in mission-driven risk management.

For Board Members:

1. Board retreat

- Plan a board retreat to focus on risk management.

2. Keep Risk Management on the board's agenda

- Include a regular agenda item at board meetings (or every other board meeting) for a 2 minute brainstorming session entitled, "What's keeping you up at night?" during which board members are encouraged to share any concern they have about the nonprofit. At the end of the 2 minutes, the board as a whole can decide which of the concerns should be included in future meetings as a topic of discussion under "new business" and which concerns may warrant immediate attention.
- Sharing these concerns in an open forum is helpful to spark creative thinking and to uncover less-obvious risks. In some board cultures, it may be more comfortable if board members share their concerns with the CEO/executive director in an email or phone call prior to the meeting so that the staff leader can summarize the concerns in a report to the board at the meeting.

3. Risk Management Task Force

- Convene a task force or Risk Management Committee that includes board members. Assist the committee by providing outside resources such as written materials, tutorials, or a consultant who can facilitate the process of risk identification and assessment and help move the board towards the adoption of a risk management plan.

4. Education

- Educate the board about liability and loss exposures by providing an annual review of the organization's insurance claims history that year and any legal actions threatened or brought against the nonprofit.

> “Remember to include on your list the commitment to take advantage of free and affordable resources that were designed to help you better understand and cope with risk in your nonprofit. NRMC’s Web site, **www.nonprofitrisk.org**, is a great place to start.”

New Year, New List
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handlebars of my treadmill tells me that having a piece of equipment in my bedroom isn’t sufficient motivation to get moving.

Resolution #1 — Be Strategic

The first resolution for 2008 is a much-needed reminder about the importance of a strategic, versus tactical approach to the myriad risk management challenges facing nonprofits. Risk management guru (and former NRMC Board Member) H. Felix Kloman reminds nonprofit leaders to, “Consider all the dimensions of risk, without becoming tied up in its more common problems. Unexpected events or situations can be either or both favorable or unfavorable. Avoid looking only at the possible downsides (depth) and remember height. Consider the breadth of those affected: not only yourself and your organization but others and other sections of the world as well. Consider the dimension of time. The past tells us only a small piece of what we should expect in the present and future. Don’t be blinded by projections of the commonplace: consider those unusual outliers who effects may be monumental. Risk is more strategic than tactical!”

Resolution #2 — Establish a Risk Management To Do List

Rather than getting bogged down in an impossible list of risk management to dos for 2008, consider creating a short list of practical action items for the current calendar year. This short list of resolutions may be a starting point, or it may inspire the identification of other doable steps, such as scheduling regular safety briefings for volunteers prior to all upcoming special events. Remember to include on your list the commitment to take advantage of free and affordable resources that were designed to help you better understand and cope with risk in your nonprofit. NRMC’s Web site, **www.nonprofitrisk.org**, is a great place to start. Another item you might want to put on your list is the creation of a concise summary of your insurance program. At NRMC we call this invaluable summary a “Schedule of Insurance.” The schedule, often created in a spreadsheet program such as Excel, ideally includes the following information: policy type, policy

period, policy #, carrier, deductible/retention, annual premium and special policy conditions or exclusions. If creating the summary feels daunting, ask your agent or broker to prepare a schedule for you. Remind them to include a notation about any policies they have recommended but have not been purchased.

Resolution #3 — Re-Connect with Your Insurance Advisor

Throughout the year I receive calls from nonprofit leaders who are unhappy about the service they are receiving from their insurance agent or broker. Yet during a recent survey of NRMC clients the majority of respondents reported, ironically, that their agent or broker is the first person they turn to for help on risk management matters. Like the popular remedy from your IT consultant—"try rebooting your computer"—it may be time to reboot your relationship with your insurance advisor. If you're not receiving the prompt, professional and thorough advice your nonprofit *needs* and *deserves*, request a meeting with your advisor to discuss your expectations, wants, aspirations, plans for the immediate and long-term future, and request information on the help available to you as a customer.

Your insurance advisor should be an invaluable resource to your nonprofit, providing sage counsel to guide your risk financing decisions. As much as you rely on this advice, however, remember that the ultimate responsibility for wise decision making rests with the leaders of the organization. Working with an insurance advisor does not mean that you have transferred responsibility for risk financing decisions designed to protect your nonprofit.

Resolution #4 — Draft a Contingency Plan

Ask, "what would I do in a variety of extreme (both favorable and unfavorable) situations?" Consider how your nonprofit will maintain the confidence of key stakeholders. Developing a contingency plan may lead directly and inevitably to the creation of a comprehensive risk management plan. Whether you're starting with a simple contingency plan, developing a business continuity plan, or fully committed to drafting a true risk management plan, the Center offers many tools that can help. Our free online business continuity planning course is available at **www.nonprofitrisk.org** under the Online Tools tab. If you're looking for a step by step approach to creating a custom risk management plan, check out "My Risk Management Plan," an affordable tool that walks you through the process of creating a customized risk management plan for your nonprofit. One full-time nonprofit risk manager recently called the program a "lifesaver" for her youth-serving organization. Each plan fits the unique needs of that specific organization. To begin the process, go directly to **www.myriskmanagementplan.org** or visit

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"Like the popular remedy from your IT consultant—"try rebooting your computer"—it may be time to reboot your relationship with your insurance advisor."

Professional Development and Training Calendar

Fill out your 2008 calendar with professional development and training opportunities brought to you by the Nonprofit Risk Management Center. You won't want to miss any of these.

REGIONAL CONFERENCES

The Center's 2008 Regional Conferences will be held during the period January-June 2008. Preliminary details on these recent events are featured below. To inquire about hosting a one or two-day risk management conference in your community, contact Melanie Herman via e-mail at Melanie@nonprofitrisk.org.

April 15
Risk Management & Finance Essentials for Nonprofit Leaders
Phoenix, AZ

Hosted and Sponsored by: Berkeley Risk

April 17
Risk Management & Finance Essentials for Nonprofit Leaders
Tucson, AZ

Hosted and Sponsored by: Berkeley Risk

June 11
Risk Management & Finance Essentials for Nonprofit Leaders
Little Rock, AR

Hosted by: Arkansas Coalition for Excellence

Sponsored by: Public Entity Risk Institute

June 12
Risk Management & Finance Essentials for Nonprofit Leaders
Springdale, AR

Hosted by: Arkansas Coalition for Excellence

Sponsored by: Public Entity Risk Institute

June 26–27
Risk Management & Finance Essentials for Nonprofit Leaders
Kennebunkport, ME

Hosted by: Maine Association of Nonprofits

Sponsored by: Public Entity Risk Institute

WEBINARS

High-quality, monthly training delivered right to your desktop.

The series of 12 topics is ideal for in-service training, risk-management skills polishing and orienting senior management and board members to individual aspects of managing risks in nonprofit organizations.

Features

- A new topic each month. (See below for full list.)
- 60-minutes of content with continuous live chat
- Real-time visuals and audio
- Downloadable handout materials
- Callers within the USA incur no long-distance telephone charges.
- Same time, same place: Tune in the 1st Wednesday of each month at 2 p.m. Eastern time

Uses — Several

- In-service education
- Orientation
- Refresher course
- Issue update

Requirements — Some

- 1 computer with Internet connection
- Telephone (with speaker function if others will be joining you)
- Chairs for participants

Restrictions — None

- Invite as many staff to participate as can comfortably view a single computer screen
- Sign up for one topic, several or the entire series
- If you can't participate in the live event, order the recording of the Webinar (for the same price) and listen when it's more convenient for you

Register — The more you order, the better your price.

Topics

January 16
Domestic Violence in the Workplace: Protecting Your Staff and Your Nonprofit
Purchase the recording of this recently concluded program and benefit from the informative presentation!

February 6
The New 990: Friend or Foe? What You Need to Know to Prepare Your Organization and the Board for the Road Ahead

March 5
Managing Technology Risks: Employee and Volunteer Blogs, e-Commerce and Internet Piracy

April 2
Risks of Generating Revenue: Charities Doing Good or Doing Business?

May 7
Developing and Managing Conflict of Interest Policies

June 4
Whistleblowers and Retaliation Claims: Policies That Protect Your Nonprofit

July 2
Reviewing Financial Transactions: Board and Staff Roles in Internal Controls and Audit Functions

August 6
Benefits in the Nonprofit Workplace: Balancing Risk and Reward

September 3
Background Checking and Your Nonprofit

October 1
Managing the Risks of Deploying Youthful Volunteers

November 5
Managing Fundraising Risks

December 3
Managing Special Event Risks

The Center is grateful to the Public Entity Risk Institute (www.riskinstitute.org) for providing a generous grant to support the 2008 Web Seminar series.

Risk Management and Finance Summit for Nonprofits

The Center has delivered a dozen annual meetings (formerly the *Nonprofit Risk Management Institutes* and then the *Risk Management and Finance Summit for Nonprofits).* The three-day event comprises keynote speakers, workshops, trainings, networking opportunities and a helpful exhibit hall provided by the corporate sponsors, whose participation makes our reasonable, nonprofit-friendly registration fees possible.

September 7–9
2008 Risk Management and Finance Summit for Nonprofits
Minneapolis, Minnesota

Hosted by: the Nonprofit Risk Management Center, the Minnesota Council of Nonprofits, ChoicePoint, Riverport Insurance Company, Travelers and the YMCA of Greater Saint Paul and Minneapolis

We encourage you to book your hotel accommodations early at the Marriott City Center, the site of the *Summit*, as we anticipate that rooms will fill quickly! To reserve your sleeping rooms at the Marriott City Center, go to www.nonprofitrisk.org, Training Tab, Annual Conference and click the link for the Marriott.

How We Can Help You the Year Through

The Nonprofit Risk Management Center, established in 1990, provides assistance and resources for community-serving nonprofit organizations. As a nonprofit, the Center is uniquely positioned to both understand and respond to questions with practical, affordable suggestions for controlling risks that threaten a nonprofit's ability to accomplish its mission.

Our mission is to help nonprofits cope with uncertainty.

- We provide *free technical assistance* by telephone, (202) 785-3891, or e-mail, info@nonprofitrisk.org, to nonprofit staff and volunteers.
- We produce affordable, easy-to-read publications. (Some are free!)
- We offer an interactive risk assessment software program on the Web called Nonprofit CARES (Computer Assisted Risk Evaluation System), www.nonprofitrisk.org, under the Online Tools tab.
- We publish the *Risk Management Essentials* newsletter, which is distributed to thousands of nonprofits three times each year. Sign up for your subscription to our e-news and *Risk Management Essentials* on our Web site, www.nonprofitrisk.org under the Library tab.
- We design and deliver workshops at events and conferences sponsored by nonprofit organizations, umbrella groups and associations, and insurance providers.
- We sponsor regional conferences on risk management and hold an annual conference, called the *Risk Management & Finance Summit for Nonprofits*, each fall. See www.nonprofitrisk.org and peruse the Training tab.
- We offer competitively priced consulting services, including risk assessments. Visit www.nonprofitrisk.org and peruse the Consulting tab.

To learn more about our services, watch our free online Web seminars — The More You Know, Parts 1 & 2.

The Nonprofit Risk Management Center is a 501(c)(3) nonprofit organization. The Center does not sell insurance or endorse organizations that do.

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www.nonprofitrisk.org and see the tab marked "Online Tools."

Resolution #5 — Ask and You Shall Receive

As I have the opportunity to meet one on one with the managers of specialty nonprofit insurance programs I am often impressed with the resources they have made available to their nonprofit insureds and their plans to do more of that in the future. Yet many remark that they are sometimes disappointed that the number of insureds who take advantage of these resources remains small.

Take a few minutes to visit the web sites of your nonprofit's insurance carriers. Remember that you may be purchasing directors' and officers' liability, general liability, professional liability, sexual misconduct, property coverage and workers compensation coverage from different carriers. If you're uncertain about the identities of your carriers, see Resolution #3.

Visit the web sites of these carriers and look for the page or section of the site listing the company's loss prevention or risk management resources. Bookmark those pages that offer informative tools and materials and send an email to key staff in your organization alerting them to these available resources.

Add the discussion of these resources to the agenda for an upcoming staff meeting. If you're unsuccessful in your efforts to identify your carriers' loss prevention resources, call your agent or broker and seek their help. ■

Melanie L. Herman is Executive Director of the Nonprofit Risk Management Center. Melanie welcomes your comments and feedback on the topics covered in this article. She can be reached at (202) 785-3891 or Melanie@nonprofitrisk.org.

Volunteer or Employee: Do You Know the Difference?

By Jennifer Chandler Hauge

At the Nonprofit Risk Management Center, we answer your questions via e-mail info@nonprofitrisk.org or phone (202) 785-3891 every day. One of the most frequently asked questions is whether a worker is a **volunteer** or an **employee**.

Q: What is the definition of a volunteer?

A: Federal law, under the federal Fair Labor Standards Act, (FLSA) defines individuals that provide services without any expectation of compensation, and without any coercion or intimidation, as "volunteers" (non-employees).

However, there are all sorts of nuances to this definition. For instance, if a volunteer receives a small payment or something of value in exchange for volunteering, is the worker automatically an employee even if she or he didn't "expect" to be paid? What about a worker who is not compensated but receives college credit for her work? Still a volunteer? Maybe, maybe not.

Many volunteers receive indirect compensation that the government doesn't count as "compensation," such as free parking. Discounts at the cafeteria would also fall into the category of compensation that is provided more for the convenience of the nonprofit (to encourage volunteers to volunteer) than as "compensation" for the volunteer. However, other types of indirect compensation—such as a free membership to the Y's fitness center provided to volunteer instructors—has a real dollar value and may be established by the nonprofit as a "quid pro quo" for volunteering, and thus can be considered compensation.

Some factors that may tip the balance between *volunteer* and *employee* include:

- Is the worker motivated by a personal civic, humanitarian, charitable, religious or public-service motive?
- Are the services performed typically associated with volunteer work?
- Are the services provided different from those typically performed by paid workers and are the hours of service less than full time?
- How much control does the nonprofit exert over the volunteer while she or he is performing services?
- Does the volunteer typically arrange his or her own schedule

to provide services when it is convenient for the volunteer?

To be sure whether or not the worker in question is really a volunteer, we encourage you to contact us at info@nonprofitrisk.org with details about how, if at all, you compensate or reimburse your volunteers.

Q: What happens if we mis-classify a worker as a volunteer?

A: Employees are owed minimum wage, overtime payments (if applicable) and withholdings for salary, such as income tax and social security payments, that the nonprofit will have to pay to the worker if the government determines that the worker is really an employee. The nonprofit will also have to include the worker in the pool of covered insureds for workers' compensation purposes, if ordinarily volunteers are not eligible for workers' compensation insurance.

Q: Can an employee at a nonprofit volunteer for the nonprofit?

A: The U.S. Department of Labor takes the position that employees may not volunteer to do things for their employer that are "the same as, similar, or related to" their normal job duties or, if the volunteer's services are provided at the employer's request or direction or during the employee's normal working hours, **even if the duties being performed are dissimilar** from the employee's regular job duties.

Like many questions posed, the answer hinges on the specifics of the circumstances. If you still have questions after reading the above, please get in touch with us via info@nonprofitrisk.org.

Jennifer Chandler Hauge is Senior Counsel and Director of Special Projects at the Nonprofit Risk Management Center. Jennifer welcomes your comments and feedback on the topics covered in this article. She can be reached at (202) 785-3891 or Jennifer@nonprofitrisk.org.

"One of the most frequently asked questions is whether a worker is a **volunteer** or an **employee**."

New Audit Standards May Feel Like a Foreign Landscape

By Jennifer Chandler Hauge

Has your auditor given you a call about the new audit standards under *Statement on Auditing Standards, No. 112* ("SAS 112")? (see www.aicpa.org/download/members/div/auditstd/AU-00325.PDF) Officially known as "Communicating Internal Control Related Matters Identified in An Audit," the new requirements will be unfamiliar to many nonprofits that receive a management letter identifying "significant deficiencies" or "material weaknesses" in internal controls that had not been noted in prior years. Since many accountants were not fully briefed on the new standards until recently, audit firms didn't have much time to prepare their clients for changes created by SAS 112. Consequently, this year's audit and management letter may feel as if you are in a foreign territory—but there are steps your organization can take to soften the landing in new territory.

What's New

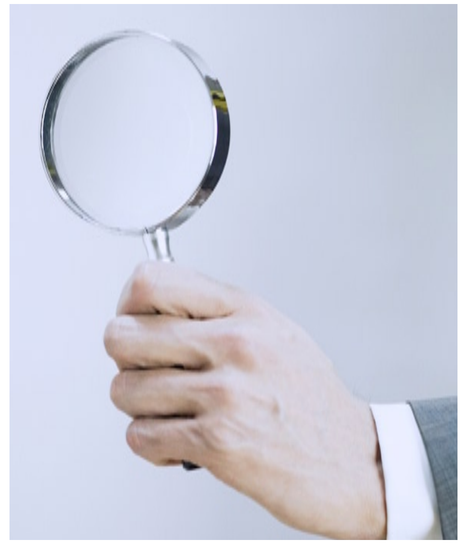
In May 2006, the American Institute of Certified Public Accountants (AICPA) issued new accounting standards. Specifically, SAS 112, which is effective for audits of financial statements for fiscal years ending December 15, 2006, or thereafter, requires auditors to communicate **in writing** to management or others charged with the nonprofit's governance (such as the board members) whether any significant deficiencies/material weaknesses exist in the organization's internal controls. (The report of the deficiency could be made orally as long as it's followed by a written report within 60 days.)

The new standards underscore that it is management's responsibility, *not the auditor's* to establish and maintain internal controls and to fairly represent the financial position of the nonprofit in financial reports/statements. Also, the new standards underscore that:

- It's the auditor's responsibility to evaluate those controls and to communicate to management if there are deficiencies, including deficiencies that were noted in prior audits *but not yet addressed or resolved by the nonprofit*. In addition, auditors are required to communicate deficiencies and weaknesses **in writing** to the board **every year** for as long as the deficiencies and weaknesses exist.

- Auditors who discover "control deficiencies" during the course of an audit are required to identify the "likelihood" of a given deficiency continuing, as well as the magnitude of the potential or actual error that **could** be caused by that deficiency.

- Auditors are required to evaluate whether the deficiency is a "significant deficiency" or a "material weakness." (If the auditor determines that the control deficiency is *not* a significant deficiency or a material weakness, the auditor doesn't have to report the control deficiency in writing to management.)



What Is a "Control Deficiency?"

As we all know, ill-prepared financial reports can lead to incorrect financial information being shared with management or board members, and inaccurate reporting to the IRS, which can result in penalties to the organization, or even material fraud, including misappropriation of assets. Consequently, financial risk management involves putting in place procedures that can prevent or detect misstatements of the true picture of a nonprofit's finances.

A "control deficiency" exists if there aren't adequate systems in place that can help employees or management prevent or detect misstatements of the nonprofit's financial position on a timely basis. For example:

- A control deficiency in a small nonprofit would exist if it were standard practice for the same employee to open the mail and log-in checks received, process deposits, approve expenditures, and reconcile bank statements. This internal control weakness will now be referred to in the management letter every year until the problem is resolved. Under prior standards, the auditor had the option of communicating such deficiencies verbally to the management and the board.

- A control deficiency exists in a nonprofit that does not have any staff member capable of preparing financial statements in conformity with Generally Accepted Accounting Principles. In such cases the outside auditor is required to issue a management letter citing a "material weakness" because SAS 112 provides that there is a "control deficiency" in any organization that does not have the internal capacity to prepare financial statements that comply with GAAP.

- If this situation applies to your nonprofit, consider outsourcing the preparation of financial statements to a vendor more highly trained than the nonprofit's own staff. The nonprofit's policies and procedures should be followed by the outsourced service provider, and management is still responsible for the outsourced functions. Added bonus: The vendor may have more up-to-date financial management software and may be able to guarantee that state-of-the-art computer back-up systems are in place.

Be Prepared

Your organization can take 10 steps to prepare itself to comply with the new standards:

1. Educate staff with financial responsibilities, as well as the nonprofit's volunteer treasurer, and all board members about the new requirement that auditors both evaluate whether control deficiencies exist and the requirement that the auditors communicate their findings with management/board members.

2. Take a look at last year's management letter. Were any internal control weaknesses noted or suggestions made? What has been done about those suggestions? Be prepared to demonstrate that the issues noted by the auditors have been addressed—or be ready with an explanation why they have not been remediated.

3. Work with your outside auditor to identify concerns **before** the auditor arrives to conduct fieldwork in your office to provide an opportunity for your nonprofit to "fix" deficiencies before the auditor is required to note them in the audit letter. Ask your accountant or auditor for sample financial policies.

4. Communicate any changes your nonprofit has made in its procedures so the auditor is aware of them and can take those changes into account in this year's audit.

5. Ensure that the nonprofit has technology controls, such as limited access to computer files with financial and confidential human resources information, and has a business continuity plan that includes backing up of computer files.

6. Ensure that the board is meeting on a regular basis, and is engaged and actively participating in oversight of the nonprofit's finances that includes reviewing accurate and timely financial reports.

7. Make it standard practice to conduct background checks on employees who handle cash and financial accounting/reporting.

8. Expect slightly higher audit preparation fees. You may want to discuss fees with your auditor *now* to be prepared for budget planning purposes.

9. Evaluate the reasonableness of making changes in procedures that will result in meeting the higher standards.

- For some organizations, receiving a management letter that identifies a "material weakness" may be hard to swallow but unavoidable because the nonprofit has no staff member skilled enough to prepare financial statements in accordance with GAAP.

10. In some cases the best preparation may be proactive communication: Inform key stakeholders that your organization is aware of an accounting deficiency that has been/will be cited in the management letter, but has determined that correcting the deficiency is not in the best interest of the organization at this time. Expect to be challenged on your position and be prepared with a more detailed response.

Jennifer Chandler Hauge is Senior Counsel and Director of Special Projects at the Nonprofit Risk Management Center. Jennifer welcomes your comments and feedback on the topics covered in this article. She can be reached at (202) 785-3891 or Jennifer@nonprofitrisk.org.

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