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## 2008 Resolutions – Resources:

- 1. Institute internal financial controls and procedures that ensure charitable funds are used for the charitable purposes for which they were raised. Review controls and procedures with board of directors or relevant board committee.**

The board of directors of a not-for-profit corporation has a fiduciary obligation to ensure that charitable funds are used for the charitable purpose for which they were raised and are not diverted for other purposes or for an individual's benefit. Regulators and funders are increasingly concerned about, and are monitoring, a not-for-profit corporation's internal controls. Internal controls are policies and procedures related to accounting, reporting, financial and personnel management that protect the not-for-profit corporation's assets from misuse and mismanagement.

*For guidance on proper internal controls, read the New York State Attorney General's publication on Internal Controls and Financial Accountability, available at [www.oag.state.ny.us/charities/internal\\_controls.pdf](http://www.oag.state.ny.us/charities/internal_controls.pdf).*

*For more information on the board of directors' fiduciary obligations to a not-for-profit corporation and on good governance and financial oversight, read the Independent Sector's "Principles for Good Governance and Ethical Practices: A Guide for Charities and Foundations, available at <http://www.nonprofitpanel.org/>.*

- 2. Review the new Form 990 released by Internal Revenue Service in December 2007. Revise internal tracking procedures to gather required data. Revise internal tracking procedures to gather required data. For smaller organizations (those with gross revenue below \$25,000) file new Form 990-N.**

Every organization with tax-exempt status must file the appropriate annual statement with the IRS by the 15th day of the 5th month after the end of its fiscal year, unless they are subject to an exemption. With the enactment of the Pension Reform Act this requirement has been expanded to tax-exempt organizations with revenues of less than \$25,000.

*Organizations with annual gross revenues of \$25,000 will be required to file the revised Form 990. The new Form 990 and IRS overview of the changes are available at <http://www.irs.gov/charities/article/0,,id=176613,00.html>.*

*Organizations with annual gross revenues of less than \$25,000 will now be required to provide a short status report to the IRS in the form of the new Form 990-N, or e-Postcard. Additional information is available at [http://www.lawyersalliance.org/news\\_legal\\_alerts.php#3](http://www.lawyersalliance.org/news_legal_alerts.php#3).*

**3. Assess organization's insurance coverage for sufficient coverage of all programs, board, staff, volunteers and clients.**

Adequate insurance coverage protects organizational assets in the event a claim is made against the not-for-profit corporation. When examining insurance coverage, pay particular attention to the exclusions (the items/persons that are not covered by the policy) and the amount of the deductible.

*For helpful answers to common questions on insurance coverage for not-for-profit corporations, visit the Non-Profit Risk Management Center's website at <http://nonprofitrisk.org/library/articles/articles.shtml#insurance>.*

*For a discussion of Directors & Officers liability insurance, visit <http://www.npccny.org/info/oi2.htm>.*

*For information on workers compensation and disability insurance for employees, visit <http://www.wcb.state.ny.us/content/main/forms/oc923.pdf>. or <http://www.nysif.com/>.*

**4. Evaluate executive director's performance and consider reasonableness of compensation package.**

Exempt organizations can pay reasonable compensation to their employees. Annually evaluating an executive director's performance helps support compensation decisions and evidences proper board oversight of the organization. If an exempt organization pays excessive compensation, employees and board members can be subject to intermediate sanctions by the IRS including assessments of up to a 200% tax on the excess benefits.

*For a sample executive evaluation form from the Free Management Library, see <http://www.managementhelp.org/boards/edvalfrm.htm>.*

*A short summary of best practices for compensation review is available on Compass Point Non-Profit Services' website at <http://www.compasspoint.org/boardcafe/details.php?id=7>.*

*Reports on comparable compensation for similarly situated non-profits are available from Guidestar's website <http://www.guidestar.org/services/compstudy.jsp>.*

*For a lower cost alternative, review recent IRS Form 990s of similar non-profit organizations yourself. Many non-profits make their Form 990s available on their websites or <http://www.guidestar.org/>.*

**5. Examine hiring procedures including job applications, procedures for background checks and new I-9 form.**

Not-for-profit employers are generally subject to the same employment laws as for profit employers. Improving hiring practices increases the likelihood of a successful employment relationship and limits exposure for wrongful hiring or firing decisions.

*Employment law guide is available at [http://lawyersalliance.org/publications\\_list.php](http://lawyersalliance.org/publications_list.php).*

*Information on Lawyers Alliance employment law related workshops is available at <http://lawyersalliance.org/workshops.ph>.*

*Suggestions for best practices are available at <http://www.workfornonprofits.org/Media/Articles/10best.pdf>.*

*There is a wide spectrum of laws impacting hiring practices. For a brief summary of the most widely applicable laws, see <http://www.npgoodpractice.org/Resource/Resource.aspx?resourceid=5192>.*

*Guidelines for the newly released Form I-9 are available at [http://lawyersalliance.org/news\\_legal\\_alerts.php](http://lawyersalliance.org/news_legal_alerts.php) - 4 and the form itself is available at [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf).*

## **6. Update harassment and non-discrimination policies. Consider holding harassment training.**

Harassment and non-discrimination policies should be updated and reviewed. It is important that policies are both understandable and accessible to your employees and that the policies address employee–employee harassment and employee–client harassment. Having a harassment policy in place can provide protection to your organization if a harassment claim is raised. However, if the harassment policies are not followed or if your policies are not tailored to your employees, this protection may be ineffective.

*General information on applicable federal laws on discrimination is available at [http://www.eeoc.gov/abouteeo/overview\\_practices.html](http://www.eeoc.gov/abouteeo/overview_practices.html).*

*In addition to federal laws, city and state anti-discrimination laws also regulate this area of the law. Information on New York state laws is available at <http://www.dhr.state.ny.us/mission.html> and information on New York City laws is available at <http://www.nyc.gov/html/cchr/home.html>.*

*If you are interested in holding harassment training, please contact Lawyers Alliance.*

## **7. Adopt whistleblower and document retention policies.**

The Sarbanes-Oxley Act of 2002 (SOX) provides protection for whistle-blowers and imposes criminal penalties for actions taken in retaliation against those who report suspected illegal activities within an organization. A whistle-blower policy establishes a confidential way for employees to report any inappropriateness or suspected illegal activity. Not-for-profit corporations should develop and adopt a whistle-blower policy to handle complaints and allegations of wrongdoing.

*For more information on whistleblower policies, visit <http://www.nonprofitrisk.org/library/articles/employmentwhistleblower.shtml>.*

SOX made it a crime to alter, conceal, falsify, or destroy any document (or to persuade someone else to do so) to prevent its use in an official proceeding (e.g., a federal investigation). Not-for-profit corporations should maintain appropriate records and documents about their operations, including financial records, employment files, and documents pertaining to real estate and other major transactions. Such records should be archived and preserved according to the organization's Document Retention Policy, which sets forth mandatory procedures for retaining important information and records.

*To learn more about a Document Retention/Destruction Policy and how long documents should be retained, visit [www.ncna.org/Document\\_Destruction.doc](http://www.ncna.org/Document_Destruction.doc).*

*If your organization would like to develop and adopt a whistle-blower or document retention policy, please contact Lawyers Alliance for assistance.*

**8. Ensure the corporation has necessary licenses to offer professional services such as creative arts therapy, mental health counseling and social work.**

When a not-for-profit corporation offers professional services that are regulated by the Office of Professional Services of the New York Department of Education, the corporation (not just the professional employee) must have a license/operating certificate from the appropriate regulatory authority.

*For a list of the professions regulated by the Department of Education, visit the Office of Professional Services' website at <http://www.op.nysed.gov/proflist.htm>.*

*For the licensing requirements for a not-for-profit corporation to offer mental health services, visit <http://www.omh.state.ny.us/omhweb/licensing/>.*

**9. Understand how an exempt organization can raise political awareness without violating federal tax law.**

There are varied restrictions on political activities of tax-exempt organizations, but certain activities are permissible, such as get-out-the-vote campaigns, voter education, and voter registration programs. Other activities, including any sort of partisan campaigning, identification of particular candidates, or registering voters only for a particular party, are strictly prohibited.

*For more general information from Lawyers Alliance, see [http://lawyersalliance.org/news\\_legal\\_alerts.php](http://lawyersalliance.org/news_legal_alerts.php) - 4.*

*For the IRS guidelines, see <http://www.irs.gov/charities/article/0,,id=170893,00.html>.*

**10. Call Lawyers Alliance resource call hotline (212) 219-1800 ext. 224 or check Lawyers Alliance website [www.lawyersalliance.org](http://www.lawyersalliance.org) the next time we have a legal question.**