

Ask A Question

Acronym

Question: What is the Fair Credit Reporting Act (FCRA)?

Response: The Fair Credit Reporting Act is a set of model policies protecting the privacy of employees regarding credit information. The policies are available for review on the Federal Trade Commission website, www.ftc.gov/credit.

Question: What is USERRA?

Response: USERRA is the acronym for Uniformed Services Employment and Reemployment Rights Act of 1994. USERRA protects the employment rights and benefits of military service members on their return to civilian life. USERRA prohibits employment discrimination or retaliation against past or present members of the uniformed services and applicants to services. For more detail, see www.access.gpo.gov for an elaboration of USERRA plus U.S. Department of Labor draft regulations of recommended changes.

Board of Directors

Question: Several members of a board of directors are active on other nonprofit boards, will a typical Director's and Officer's liability policy protect their activities on other boards?

Response: Most policies exclude coverage for claims resulting from any insured serving another organization. Check your policy for a provision that limits or excludes coverage for 'outside' board or volunteer activities. (*D & O: What You Need to Know*, published by the Nonprofit Management Center)

Question: What is a consent agenda?

Response: A consent agenda is a component of a meeting agenda that enables the board to group routine items and resolutions under one agenda item. Typical items for the consent agenda include board minutes, routine reports and contracts, and minor changes in procedure or policy. Board members are provided information regarding items on the consent agenda prior to the meeting.

Routine, standard, non-controversial, and self-explanatory items can be grouped together and approved by a single vote when organizations use a consent agenda. If a board member would like discussion on an item, he/she can request removing it from the consent agenda and if the majority of board members present concur, the item could be removed and discussed.

Bylaws

Question: Who is under the jurisdiction of a conflict of interest policy?

Response: Any board member, officer, staff member, or volunteer who could influence a decision regarding a transaction affecting the nonprofit.

Question: What types of transactions are included in a conflict of interest policy?

Response: Examples of transactions included in a conflict of interest policy are a contract with a vendor, and interest in property owned or leased by the nonprofit, or the negotiation of a contract with a consultant.

Compliance

Question: What steps can a nonprofit organization take to comply with federal and state laws forbidding discrimination based upon an employee's origin, color, sex, national origin, religion, age, and disability?

Response: According to Community Legal Resources to reduce the risk of discrimination claims an employer can:

- Have an Employee Handbook that includes appropriate and carefully drafted nondiscrimination policies that are administered consistently such as: 1.) an at-will provision; 2.) a discrimination and harassment policy; 3.) a limitation of liability policy and 4.) an agreement to arbitrate all claims;
- Document all performance deficiencies;
- Make sure that employees acknowledge receipt of all policies;
- Take all civil rights complaints seriously and take immediate remedial action and investigate the employee's claims; and
- Use a severance agreement when terminating employees who fall within a protected category.

For more information, visit the Community Legal Resources website at www.cloonline.org

Question: Does any part of the Sarbanes-Oxley Act apply to nonprofits?

Response: Two parts of the law are mandatory for nonprofits and foundations:

- 1) Nonprofits must develop, adopt, and disclose a policy enabling employees who suspect illegal or inappropriate activities in their organization to report problems confidentially.
- 2) Nonprofits must have a written, mandatory policy on document retention and periodic destruction, including electronic files and voice mail messages.

Note: A sample whistleblower policy and set of recommended document retention guidelines are available to members by contacting Mainstream, Inc.

Question: What do nonprofits need to do to comply with the new Federal Communications Commission (FCC) rules on fax communications?

Response: Effective January 1, 2005, nonprofit organizations will be required to obtain express written permission to send unsolicited fax advertisements that contain "commercial" content, i.e., promote memberships, products, programs, and services. An established business relationship no longer constitutes permission to send unsolicited commercial faxes. The FCC recommends that nonprofits seek written permission to send faxes to donors, members, constituents, and other parties, prior to January 1, 2005. After the new rules become applicable, faxes must include date and time of the fax, legal name of the sender (not the entity that sends the fax), and the telephone and fax number of the sender.

Question: What are 501(c)(3) organizations prohibited to do in a political campaign on behalf of or in opposition to any candidate for public office?

Response: According to the Internal Revenue Service, a 501(c)(3) organization should not: Endorse candidates for public office; make contributions to political parties or individual candidates; encourage voting for or against a candidate; participate in political campaigns; or rate candidates.

Donations

Question: Do you have any suggestions for receiving a donated vehicle?

Response:

- 1) Be sure the title is free of all liens;
- 2) Have the title transferred to your nonprofit's name and keep a copy of this record. List your organization as "purchaser" and the donor as "seller";
- 3) Be sure all taxes and insurance on the vehicle are paid;
- 4) Send the donor a receipt; and
- 5) Require the donor to value the vehicle for deductibility purposes.

Suggestions are from an article in the North Carolina Center for Nonprofits newsletter.

Question: How do you decide whether to accept a gift from a donor?

Response: The nonprofit organization's board of directors should have policies in place to govern the acceptance and disposition of charitable gifts that are received in the course of its regular fund raising. The policies should include procedures to determine any limits on the type of property which will be accepted and what the disposition of the property will be. For example, if stocks are received, will the stocks be sold or managed as an investment? If the stocks are sold, how many days following the receipt of the gift will the stocks be sold, who will sell them, etc.

Question: How do you acknowledge donations when you are providing goods such as a tote bag for the contribution?

Response: Donors who receive a tote bag or other goods or services in return for their donation can not use the full amount of their contribution as a tax-deductible gift. They can only deduct the difference between their donation and the value of the goods or services they received in return. Consequently, your acknowledgment of their donation should provide them the information they need to 1) receive credit for the portion of the contribution that is tax deductible and 2) understand the estimated value of the good or service. A sample acknowledgement follows:

To be used when quid pro contribution exceeds \$75, and goods or services of more than "insubstantial value" are provided by the donee organization.

Thank you for your contribution to (donee). We are pleased to acknowledge your contribution on (date of receipt) of the following (specify amount of cash or describe property given).

The (donee) provided the following goods and/or services with an estimated value of \$___ in return for your contribution (describe goods and/or services provided to donor).

Under the current tax laws, only the amount of your contribution that exceeds the amount of the goods/services provided to you is tax deductible as a charitable contribution. Please retain this receipt for your tax records.

Question: I received a gift from a donor who requested anonymity, what should I do?

Response: As soon as it is known a donor is requesting anonymity, the executive director or board chair should communicate privately by telephone with the donor or to the donor's designee to ensure that the intentions of the request are clearly understood. The donor should be informed that anonymity cannot be guaranteed if an Internal Revenue Service receipt is required. A verbal thank you can be extended followed by a written personal thank you unless specified otherwise by the donor.

Anonymous donors do not want to be publicly thanked. Names of anonymous donors should not be listed in press releases, newspapers, annual reports, or agency newsletters, etc. Each nonprofit should have a confidentiality policy that outlines procedures for protecting donors who wish to remain anonymous.

Question: How do you determine the fair market value (FMV) for a donor?

Response: The Internal Revenue Service only allows a charitable deduction when a payment to a charity exceeds the fair market value (FMV) of the goods or services received. Otherwise there is no gift. Generally, the nonprofit's good faith estimate of the value of the goods or services will be treated as the FMV, and a donor may rely on the nonprofit's estimate. When determining FMV, keep in mind that the nonprofit must use the FMV at the point of solicitation, not at an earlier or later date.

Finance

Question: What are indirect costs?

Response: According to the Federal Register, the Federal Government defines indirect costs as "those costs of an institution which are not readily identifiable with a particular project or activity, but nevertheless are necessary to the general operation of the institution and the conduct of the activities it performs." Examples include operating and maintaining buildings and equipment, depreciation, general telephone expenses, rent, utilities, liability insurance, and audits.

Question: How often should nonprofits change auditors?

Response: The Sarbanes-Oxley Act states that either the firm selected to conduct the audit or at least the person performing the audit for the vendor should be rotated every five years. For more information, access the Independent Sector website at: www.independentsector.org/PDFs?sarbanesoxley.pdf.

Grant Writing

Question: What do I do if grant application guidelines request an agency audit to accompany the proposal?

Response: In many cases government agencies, foundations, and corporate grant makers will accept a Form 990 or the annual budget as a replacement for an agency audit. You should call the contact person listed on a grant application or the proposal request and ask if Form 990 or an annual budget can be substituted for the agency audit.

Question: What can you do if you identify a foundation or trust that you believe may be interested in funding your agency's program(s) and the information about the grant maker states "only accepts applications from pre-selected organizations"?

Response: if a contact person or telephone number of the grant maker is listed, you may call and ask if you can send information about your organization and/or if your organization could be considered to be an addition to the list of pre-selected organizations.

Question: What are Foundation Center Cooperating Collections?

Response: Foundation Center Cooperating Collections are libraries or nonprofit information centers that provide fund raising information and other funding-related technical assistance in their communities. Cooperating collections provide free funding research guidance to visitors.

Personnel Policy

Question: Our organization has written employment policies. Do we also need an employee handbook?

Response: Employment attorneys disagree on the value of an employee handbook or personnel policies manual. However, they agree on one thing- a nonprofit employer that ignores its handbook is at greater risk than an organization that operates without a handbook. Whether or not a nonprofit uses an employment handbook, the following risk management practices are important:

- Ensure that organization's personnel policies are clear, consistent and within the law.
- Make certain that the nonprofit conveys its employment policies to its employees in a clear and concise manner.
- Ensure that the organization fulfills its end of the employment relationship
- Seek legal counsel before taking any adverse employment action.

For more information on developing employment policies and practices for a nonprofit, visit the Nonprofit Risk Management Center web site <http://www.nonprofitrisk.org>.

Tax Exemption

Question: How can an agency obtain national or universal sales tax exemption, that is good in all states?

Response: There is no national sales tax exemption. Each state has individual procedures for applying for sales tax exemption.

Question: Can a church apply to the Internal Revenue Service for 501(c)(3) tax exempt status?

Response: Yes. A church would file for 501(c)(3) tax exempt status in the same manner as any non-profit organization, filing Form 1023 and including proof of incorporation with the Secretary of State's office and their E.I.N. (Employee Identification Number).

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