

BOARD MEMBER	SECTOR	EXPIRE	16-Jan	13-Mar	10-Apr						
Hon. Hal Spain	public (3)		3	3	3						
Hon. Steve Floyd	public (2)		2	2	2						
Hon. Deborah Horwood	public (3)		0	0	3						
Hon. Richard Cordes	public (4)		0	4	4						
Hon. David Dillard (Chair)	public (3)		3	3	3						
Jeffrey Lisson	low-income (2)	12/31/2020	2	2	2						
Becky Trojcak	low-income (2)	12/31/2018	2	0	0						
Bernadette Coffee	low-income (2)	12/31/2018	2	2	0						
Stephanie Hamby	low-income (2)	12/21/2021	2	2	2						
Noemi Samaniego (Vice-Chair)	low-income (4)	12/31/2018	4	4	0						
Neta Wescott	private (3)	12/31/2020	3	3	3						
Victor Belman	private (3)	12/31/2018	3	3	3						
Connie Booth	private (5)	12/31/2020	5	5	5						
Donna Holden	private (4)	12/31/2018	4	4	0						
E.A. Wadsworth	private (4)	12/31/2020	4	0	4						
volunteer hours			39	37	34	0	0	0	0	0	0

NOTICE OF MEETING
CONCHO VALLEY COMMUNITY ACTION AGENCY
BOARD OF DIRECTORS

FILED FOR RECORD
19 APR - 4 AM 10:09

Date: April 10, 2019
Time: 5:30 PM
Place: Cactus Hotel, Green Room
36 E. Twohig, San Angelo
Tom Green County, Texas

ELIZABETH HIGGILL
COUNTY CLERK
COUNTY OF TOM GREEN, TEXAS

In accordance with the Americans with Disabilities Act, we invite all attendees to advise us of any special accommodations due to disability. If assistance is needed to participate, please call (325) 653-2411. Please submit your request as far as possible in advance of the meeting you wish to attend.

Agenda

NOTICE: The Board of Directors may discuss, deliberate and take all appropriate action on any matter listed on this Agenda. Items on this Agenda may be taken out of the order listed. The Board reserves the right to deliberate in closed session pursuant to 551 of the Texas Government Code. Public comment is limited to five minutes per person on any agenda item.

1. Call to order and determine quorum.
2. Consider minutes for prior meeting and take appropriate action.
3. Consider and take appropriate action on financial report.
4. Consider and take appropriate action on CVCAA risk assessment.
5. Consider and take appropriate action on organizational chart.
6. Consider and take appropriate action on CVCAA Mission and Values.
7. Stakeholder input for Strategic Plan.
8. Consider and take appropriate action on Executive Director's report.
9. Consider future agenda items.
10. Adjournment.

The Board may go into Executive Session (close its meeting to the public):

1. The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, including, specifically, the performance evaluation of the Executive Director.
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer.
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't. Code, Chapter 551.
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't. Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

Sign this 4 day of Apr. 1, 2019.


Dr. Mark Bethune, Executive Director

CONCHO VALLEY COMMUNITY ACTION AGENCY
BOARD OF DIRECTOR'S MINUTES
April 10, 2019

Meeting was held in the Green Room 2nd floor, Cactus Hotel
36 East Twohig, San Angelo, Tom Green County, Texas

Present at meeting:

Directors:

Elected Officials:

The Honorable Richard Cordes
The Honorable David Dillard CVCAA Chair
The Honorable Hal Spain
The Honorable Steve Floyd
The Honorable Debra Horwood

Private Sector:

Victor Belman
Neta Wescott
Connie Booth
Donna Holden – absent
Elizabeth Ann Wadsworth

Low Income Sector:

Jeff Lisson
Bernie Coffee CVCAA Secretary – absent
Noemi Samaniego - CVCAA Vice-Chair – absent
Stephanie Hamby
Becky Trojcek - Absent

Staff:

Executive Director Mark Bethune
Chief Financial Officer Lyla Martinez
Community Services Director Tracey Dishon

Agenda

1. The Honorable David Dillard called the meeting to order at 5:30pm. Quorum present.
2. Consider and take appropriate action on prior meeting minutes.
Motion to accept by the Honorable Steve Floyd
Second by the Honorable Richard Cordes
Motion passed 10 - 0
3. Consider and take appropriate action on financial report.
CFO stated reports were not ready.
No action taken.

4. Consider and take appropriate action on CVCAA risk assessment.
The Honorable Richard Cordes questioned the origin of the assessment. Director explained that assessment was a self-reporting tool issued by Community Action Partnership, a national non-profit that assists community action agencies.
Motion made to accept report made by Victor Belman.
Second by the Honorable Hal Spain.
Motion passed 10 – 0

Connie Booth entered meeting

5. Consider and take appropriate action on CVCAA Organizational Chart.
The Honorable Steve Floyd questioned the appropriateness of “Weatherization Administrator.” Jeffrey Lisson suggested that “Reporting Officer” would better reflect the duties.
Motion made to accept CVCAA Organizational Chart with revised title by the Honorable Deborah Horwood.
Second by Jeffrey Lisson.
Motion passed 11 – 0
6. Consider and take appropriate action on CVCAA Mission and Values.
Motion made to accept CVCAA Mission and Values by Jeffrey Lisson.
Second by Connie Booth
Motion passed 11 - 0

The Honorable Steve Floyd left the meeting.

7. Stakeholder input for Strategic Plan.
Director suggested the Board Members review the survey prior to the next meeting and be prepared to discuss. Board Members agreed that Director’s suggestion would provide better results.
No action taken.
8. Consider and take appropriate action on Executive Director's report.
Community Services Director shared that clients are adjusting to mail-in application process. CSD also shared that, for the first time in recent memory, all Case Management slots are filled. Director noted that there is interest in funding a mobile food pantry for rural counties. Director sought input from Board Members whether CVCAA should research collaborating with other agencies on this endeavor. Connie Booth spoke to the work currently realized in Kimble County. Stephanie Hamby provided additional insight as to her understanding of possible efforts and collaborations. Board suggested Director investigate further and provide additional information to Board.
Motion made to accept report by Jeffrey Lisson.
Second by Victor Belman.
Motion passed 10 – 0.

9. Consider future agenda items. No items mentioned.

Due to conflicts in schedule, May meeting was moved to Wednesday, May 15, 2019, Meeting Room 2nd floor Cactus Hotel @ 5:30pm.

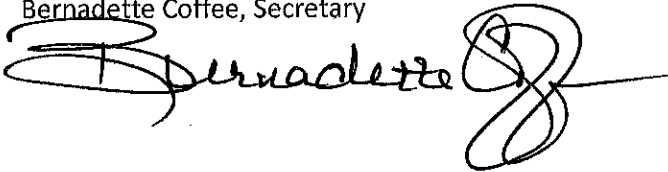
10. There being no further business before the Board, The Honorable David Dillard adjourned the meeting at 6:06pm.

Signed this 15 day of May, 2019.

The Honorable David Dillard, Chair

A handwritten signature in black ink, appearing to read "D. Dillard", written over a horizontal line.

Bernadette Coffee, Secretary

A handwritten signature in black ink, appearing to read "Bernadette Coffee", written over a horizontal line.

Risk Assessment Executive Summary

Risk Management Basics

This segment of the executive summary contains recommendations related to Risk Management Basics, including the assignment of responsibility for risk management, risk oversight, and risk committees.

- Consider forming a risk committee to ensure a diverse array of perspectives in agency risk management. See the full report for tips to increase the effectiveness of your risk committee, or reach out to NRMC for Risk Help on this topic.
- Consider drafting a risk management policy statement that describes the overarching goals and scope of your risk management program.

Governance Risk

This segment of your executive summary contains priority recommendations to strengthen your board.

- Explore ways to convey and reinforce your agency's mission and purpose, such as through short videos, infographics, or even a draft 'elevator speech.' These tools will be valuable to your board as it works to fully understand what you do, and effectively convey your mission to other stakeholders.
- See the full report for suggestions to increase the engagement and dialogue during Finance Committee presentations.
- Consider developing an annual or bi-annual board self-assessment process to provide feedback to individual board members, as well as feedback on the performance of the board as a governing team.

Facilities and Building Security

This section of your executive summary contains priority recommendations based on your answers to the questions in the Facilities and Building Security Module.

- Review your evacuation plans to ensure that they are comprehensive; a list of elements that should be included in a thorough plan can be found in your full report for this module.
- Consider developing a clear, bomb threat policy for your agency. See your full report for additional resources.
- We recommend that you consider adopting a sign in/sign out log policy for your facilities.
- Consider the value of requiring ID badges for all visitors. Explore affordable options and possible barriers to implementation. Solicit input from staff prior to implementing a new badge policy.
- Appoint a person or team to monitor compliance with building codes, licensing, and federal and state regulations. Adopt a practical schedule to follow-up on compliance goals and requirements.
- We recommend that you assign one person (per facility), and a back-up (when the principal person isn't available) to oversee or conduct routine daily inspections of your facilities. See a sample safety checklist in the report for this module.
- We recommend that your agency adopt a standard maintenance schedule or keep a repair log. For additional information, see the report for this module.
- We recommend changing how you prioritize safety violations. See the full report for details.

Human Resources and Employment Practices

This section of your executive summary notes priority recommendations based on your answers to the questions in the Human Resources and Employment Practices module.

- We recommend that you adopt a simple process to ensure the periodic review and updating of your employment policies and HR practices. Seek help from an employment attorney licensed in your state, or an HR expert. If your agency cannot afford to retain help to review your policies, ask members of the board to refer you to pro bono resources.
- You indicated that your agency has not identified who is a 'disqualified person' under IRS regulations. We recommend that you learn more about this topic, determine whether your organization is required to comply with these regulations, and take steps to ensure compliance. See the full report for resources on this topic.

Financial Reporting and Internal Controls

- See your full report for suggestions to improve financial reporting. Remember to also review Category 8 (Financial Operations and Oversight) of the COE Developed CSBG Organizational Standards to make sure that your team fully understands these expectations for community action agencies. As indicated in the narrative introduction, "The fiscal bottom line of Community Action is not isolated from the mission, it is a joint consideration."
- In order to be more effective with financial monitoring, start by using the budgeting process to create benchmarks for financial progress. Follow up by having the executive team and board (or just the finance committee) review financial reports related to cash flow and financial conditions at your organization.
- Explore the feasibility of conducting criminal history background checks during the final stage of pre-employment screening for candidates offered any role with significant financial authority or cash handling duties. Remember to consider issues related to the timing of check, the development and adoption of disqualifying criteria before you order background checks, Fair Credit Reporting Act compliance, and the applicability of a 'ban the box' law in your state and locality.
- Explore options for either improving the segregation of financial tasks, or involving non-finance personnel or the treasurer of the board in reviewing monthly bank statements for irregularities.

Contracts

This section of your executive summary features priority recommendations related to contracts and your nonprofit's contracting processes.

Client and Participant Safety

This section of your executive summary contains priority recommendations based on your answers to the questions in the Client and Participant Safety module.

- We recommend that you update your organization's policies to include specific instructions about appropriate and inappropriate hugging. For example, hugs should never be offered or given to meet the caregiver's needs, and hugs should only be from the side, over the shoulders, and never from the front.

We recommend that you revisit your policy and practices with regard to ensuring that program staff have access to the information they need to assist clientele.

Transportation

This section of your executive summary contains priority recommendations based on your answers to the questions in the Transportation module.

You indicated that your organization provides or sponsors transportation services or owns (or leases) vehicles. The following transportation issues were identified as concerns during the assessment. Look to the full report for details.

- Creating a transportation risk management statement will provide an initial step toward richer risk management of transportation in your organization. The statement serves as a guide in creating other important items like policies or training programs.
- We recommend that your agency consider adopting accident or incident response and reporting guidelines as soon as practicably possible. While no one expects to be involved in an automobile accident, one of the best things an organization can do to minimize the severity of post-accident losses is to teach drivers and passengers how to respond to and report accidents. See the full report for examples of possible guidelines.
- Driver screening is a key part of transportation risk management along with driver training and written policies and procedures. Effective driver screening can help identify driver issues before staff or volunteers even get behind the wheel. Develop a driver screening process that includes things like verifying driver's licenses and additional motor vehicle certifications required for vehicle operation. The full report will identify specific areas from the assessment that you identified as gaps in driver screening.
- Driver training is the best opportunity to verify the abilities of the people who will operate vehicles. In addition, it is the best way to communicate policies, procedures and expectations about transportation to a captive audience. We recommend instituting a driver training program as soon as possible.
- Pre- and post-use vehicle inspections help document vehicle conditions and assist with maintenance of your fleet. Consider creating an inspection procedure and documentation process to track.
- Remember that cargo is not typically covered under regular vehicle policy. Check with your broker to see if you have the appropriate policy for coverage (usually inland marine coverage).

Technology and Privacy Risk Management

This section of your executive summary contains priority recommendations based on your answers to the questions in the Technology and Privacy Risk Management module.

- We recommend that you adopt a Bring Your Own Device Policy that clarifies what agency information may and must never be accessed on personal devices, including whether employees may access Personally Identifiable Information (PII) on their personal devices.
- It is common practice to require users to change login practice on a regular basis. We recommend that you develop a policy as soon as possible that provides guidelines about the strength of passwords and the frequency of changes.
- We recommend that you begin providing periodic staff training and messaging to reduce the risk of social engineering losses at your agency. See the full report for suggested topics for this training.
- We recommend that you begin offering training to all staff on how to avoid phishing scams and frauds, and that after completing your training that you begin to conduct exercises no less than annually to test employee vulnerability to social engineering frauds.
- We recommend that you adopt a practice of checking references prior to engaging a technology vendor. For additional due diligence suggestions, see the report for this module.
- We recommend that you consider using written contracts to govern any and all relationships with technology vendors. The full report for this module contains tips and suggestions for your future technology contracts.
- You indicated that your agency does not have a data breach plan in place. We recommend that you address this gap as soon as possible. See the full report for this module for information on key components in a plan, as well as hyperlinks to NYS and other state breach notification laws.
- See the report for this module for information on cyber liability insurance.

Special Events

This section of your executive summary contains priority recommendations based on your answers to the questions in the Special Events module.

Crisis Management and Business Continuity Planning

This section of your executive summary contains priority recommendations based on your answers to questions in the Crisis Management and Business Continuity Planning module.

- To increase your confidence with respect to crisis planning, review the gaps in your crisis management plan identified in your full report for this module.
- Having key information available during a crisis will assist in providing for timely response. Look to the full report for examples of what to include in your crisis management plan.
- We recommend that you develop a crisis communications plan within the next six months. The plan could be a standalone document or part of a broader Crisis Management Plan. You no doubt have some pieces of a plan already drafted, such as an overview of your chain of command, a succession plan, an up-to-date list of staff, volunteers and other key stakeholders. See the full report for more details on a Crisis Communication plan.
- We recommend that you establish a timetable and appoint a small task force to assemble existing components of business continuity planning into a true BCP.

Volunteer Risk Management

This section of your executive summary offers priority recommendations based on your answers to the questions in the Volunteer Risk Management module.

Fundraising and Resource Development

This section of your executive summary contains priority recommendations based on your answers to the questions in the Fundraising and Resource Development module.

- Working with institutional funders can lead to complications despite the opportunity to receive larger amounts than a typical individual donor can provide. See the full report for some suggestions on how to anticipate and manage these risks.
- You indicated that your process for tracking requirements and expectations for funding received from foundations or similar organizations isn't as developed as it should be. Given that many grants have specific terms and conditions related to the funding, you should ensure that you are being accountable to them. See the full report for advice on this issue.
- You indicated that your nonprofit may not be registered in all states where you solicit individual donations. We recommend that you make the resolution of this potential gap in policies a priority. See the full report for additional information and links to helpful resources.
- Accepting individual donations without a process for managing the attendant risks can lead to problems for your organization. See the full report for possible risks and advice on how to manage individual donors.
- You indicated that your nonprofit doesn't have a process for managing the risk of unhappy or disgruntled donors. See the full report for tips on reducing the risk of unhappy donors, and also resources on turning a grumpy donor into a grateful one.
- You indicated that your nonprofit does not have practices in place to manage the risk of non-compliance with the CAN-SPAM Act. See the full report for additional information on this federal law, including resource links.
- Nonprofits that have minimal experience with government contracts may be caught off guard and unprepared for some of the risks associated with such funding, including inadequate funding for infrastructure, late payment/reimbursement, and complex reporting requirements. Thoughtfully consider the range of risks and 'what ifs' before you seek any government contract.
- You indicated that your nonprofit has not adopted goals with respect to the diversification of funding sources. Perhaps your agency has a single, highly reliable source of funding. Or your revenue streams have been judged adequately diverse. See the full report for a few risk tips related to the goal of diversifying funding sources.

End of Report - 3/19/2019 2:05:14 PM

Risk Assessment Report

Risk Management Basics

Introduction

Agency leadership teams manage risk in different ways and with different processes and structures. This segment of your Risk Assessment report provides feedback based on your answers to questions related to the assignment of risk responsibilities, whether you have a committee dedicated to risk management, risk oversight by the board, and your confidence with respect to understanding the property & casualty coverage purchased by your agency.

Risk Manager

You indicated that risk management has not been assigned to a key staff person at your agency, such as a risk manager. Designating a full-time risk manager can be an important step in strengthening a risk function. However, the vast majority of community action agencies do not have a risk professional on staff.

If resources do not permit the hiring of a professional risk manager, consider naming one or more 'risk champions'--team members who can champion risk management initiatives at your agency.

Risk champions:

- uplift the notion of 'risk' as something more dynamic than a threat--something that is worth consideration and investment
- cultivate a culture of inquiry and candor among team members who must be willing to openly discuss and deconstruct risks
- drive a holistic or systems perspective that takes into account many diverse perspectives on risks and recognizes how risks intersect and play out across many departments and functions of an organization
- instill productive--not punitive--risk assessment and risk management practices, including honest reflection on past risk events and organizational failures as a platform for collectively doing better next time.

For more information on the risk champion role, see [*What's in a Word? Risk Management Leaders as Mission Champions*](#).

Risk Management Committees

You indicated that your agency does not have a staff-level risk management committee. Risk management committees can be an invaluable resource to an agency that is striving to evolve its risk management capacity. Here are a few tips for developing a risk committee:

- determine the process for appointing or recruiting members
- draft a committee charter indicating the overarching purposes of the committee, frequency of meetings, specific goals and responsibilities, committee composition, and committee authority

- develop realistic goals and a practical plan
- plan a dynamic committee kick off meeting

For additional tips on forming and sustaining a risk committee, see: [The Nitty Gritty of a Risk Committee](#).

Risk Management Policy Statement

You indicated that your agency does not have a risk management policy statement, or other document describing the goals and scope of your risk management program. We recommend that you consider drafting such a statement. For example, your statement might explain that risk management is a shared responsibility across the agency, versus something that is the responsibility of a single person or department. Some agencies use a risk management policy statement to convey the importance of prompt reporting of incidents as well as near-misses. If you need help drafting a risk management policy statement, or if you would like someone to review your draft, use the Risk Help option available to your agency as an Affiliate Member of the Nonprofit Risk Management Center, or simply give us a call at 703.777.3504.

Governance Risk

Introduction

This report section contains recommendations to strengthen your board, including its structure, policies and operations. Like other areas in an agency, governance weaknesses can be addressed with focus, commitment and consideration of the unique circumstances and needs of your agency. Keep in mind that governance should evolve as an agency evolves: the best possible board during a time of growth may not be an effective governing body of an agency that is winding down.

Board Awareness of Mission, Structure and Programs

You indicated that one or more members of your board do not fully understand and may not be able to convey your organization's mission and purpose. This fact puts your organization at risk from at least two perspectives.

1. First, when one or more members of an organization board cannot convey the organization's mission and purpose they are practically unable to fulfill their legal duty of obedience. The duty of obedience requires that a director be faithful to the organization's mission, and act in a manner that is consistent with the mission and goals of the organization. A board member discharges the duty of obedience by monitoring the organization's activities to ensure that administrative and programmatic activities are consistent with the organization's underlying mission and goals. When a board is charged with malfeasance by a dissatisfied customer, funder, or constituent, the charge may allege that the organization board has failed to stay true to the organization's mission and purpose.
2. Second, a board member who does not fully understand the organization's mission is unable to assist in identifying or evaluating the risks facing the organization or in the case of a larger organization with a risk management team that includes paid staff, the board member would not be in a position to evaluate the risk management program in light of the organization's core mission.

We recommend that you explore ways to convey and reinforce your agency's mission and purpose. For example, in addition to the mission statement on your website, develop a short video, an infographic, or draft 'elevator speech' to capture what you do and why you do it. Strive to create simple, memorable messages, and encourage your board to take ownership of their ambassador roles.

Legal Compliance

You answered that the members of your board are confident that the organization is in compliance with federal, state and local regulations. Every organization board should operate with this high level of confidence with respect to the organization's legal compliance. Organizations are subject to a wide range of regulations and laws issued by various regulatory bodies. Keeping up with these regulations and ensuring compliance is not an easy task, even in an organization that has a large number of paid staff.

Every organization needs professional advisors that it can turn to for assistance on legal, accounting, and insurance matters. These advisors can provide valuable assistance in keeping track of key laws and regulations, and suggesting strategies that ensure compliance.

The board should receive periodic updates from the organization's key staff or professional advisors about changes in laws that apply to the organization. The board should also be kept abreast of the

organization's compliance activities. Healthy boards are inquisitive, interested, and engaged in the organization's success. This means asking questions about legal compliance from time to time.

Meeting the Duty of Care

You indicated that the members of your board know enough about the organization's programs and services to provide thoughtful leadership. The *duty of care* requires that board members be reasonably informed, participate in decisions, and act in good faith and with the care of an ordinarily prudent person in similar circumstances. It is virtually impossible for a board to meet this legal duty if any of its members know little about the organization's services and programs. Your response suggests that your board is in position to meet its duty of care.

Board Training

You indicated that your organization provides a board orientation in compliance with Standard 5.7, and that you also offer periodic educational session for your governing board. These practices are an excellent way to help a board meet its legal *duty of care*. Most organizations are dynamic organizations that regularly face new challenges and opportunities. By providing a regular forum in which to keep the board abreast of these changes you are providing the information the board needs to thoughtfully govern the organization.

Providing Timely Materials

You indicated that background materials are distributed to your board well in advance of board meetings. This is an excellent practice. A common complaint among organization CEOs is the time involved in preparing background materials for board meetings. Some argue that the time spent preparing for board meetings leaves little time to accomplish the organization's mission. Yet distributing thorough and comprehensive materials well in advance of board meetings is essential to managing an organization's governance risks. A board cannot meet its legal *duty of care* unless it has the opportunity to review information on programmatic activities, the organization's financial position, and current challenges and opportunities in time to formulate thoughtful questions. This review enables members to actively participate in board meetings.

Board Minutes

You indicated that the minutes of your board meetings reflect dissenting views and votes on specific issues. This is an excellent practice. Maintaining concise records of board votes and dissenting views could be helpful in defending a challenge or claim of malfeasance by the board.

Evaluation of the CEO

You indicated that a committee leads an annual review of the CEO, but that the entire board participates in the process. This is an excellent practice. Evaluating the chief executive's performance is an often neglected, but essential responsibility of a nonprofit board, and one that in NRMCC's view, should not be delegated entirely to a committee. Congratulations on your diligence in undertaking this almost always difficult but critically important and valuable task.

Fiscal Oversight

You indicated that you have an active board committee that receives periodic financial reports from staff, and that the committee transmits and presents these reports to the full board at regular meetings.

Beyond the board's legal responsibilities and pure survival instincts--the desire to keep the organization healthy and focused on its mission--there are additional motivating factors for diligence in the area of financial management. Federal and state governments may impose criminal penalties on organizations and their elected and appointed leaders who misuse funds, allow the waste of charitable assets, or squander donor resources. Also, civil actions may be initiated alleging harm based on the mismanagement of the organization.

An active, engaged finance committee is key to effective fiscal oversight. Congratulations on the work completed to date to ensure a high level of engagement. Consider the following suggestions to sustain your success in this area:

- Consider rotating membership on your Finance Committee, with every board member serving for at least one or two years during their full term on the board
- Include discussion prompts and questions as part of financial presentations, to engage the board around critical financial issues facing the organization; strive to make financial presentations two-way conversations
- Experiment with having members of the Finance Committee present different segments of the report. For example, one member could present an overview of the current financial statements, another could address the year-end forecast, and a third could speak to proposed changes in the organization's fiscal policies or banking relationships.

Risk Oversight by the Board

You indicated that your board discharges its responsibility for risk oversight through its receipt of reports from staff regarding critical risks and agency risk management. This is a common practice in nonprofit organizations.

In addition to presenting information about risks, make sure that you're engaging the board in conversation about the risks and strategies described in your reports. These conversations can help the board engage with the management team to understand the changing risk landscape and also be assured that top risks have been assessed and addressed.

In a survey of nonprofit organizations conducted by NRMC in 2017, 40% of participants reported that their boards talk about risk management *more than once per year*, and an additional 15% indicated that the subjects of risk and risk management are discussed at *every board meeting*.

Another increasingly common approach, which is a bit different from yours, is to assign risk oversight responsibility to an existing board committee. For example, some nonprofits have broadened the scope of the audit committee to become the Audit and Risk Oversight Committee. Other nonprofits form a risk committee of the board, such as an Enterprise Risk Management Committee or Risk Oversight Committee. Separating risk oversight from finance and audit is common when leaders believe that the most pressing risks fall outside the realm of financial management, internal controls and investments.

For additional insights on helping the board discharge its responsibility for risk oversight, see Chapter 9 - Risk Oversight by the Board in the NRMC publication, [*World-Class Risk Management for Nonprofits*](#).

Conflict of Interest Policy

You indicated that your organization has a conflict of interest policy that applies to board members. A conflict of interest policy is a risk management tool that can minimize the likelihood that the board will make a decision that is inconsistent with the best interests of the organization. You have taken an important step to protect your organization. If you haven't already done so, ask your legal counsel to

review your policy to make certain that it meets the needs of your organization.

Board Self-Assessment

You indicated that your board of directors does not periodically assess its own performance. Self-assessment of performance is a potentially valuable activity for individual members as well as the board as a whole. By conducting a periodic self-assessment, your board can determine how well it is carrying out its responsibilities. A self-assessment also provides an opportunity to identify areas where the board can improve its performance. Self-assessments are often conducted prior to board retreats, and may be a valuable resource to consultants or other outside experts working with the organization to improve its operations and performance.

Options for board self-assessment include:

- an anonymous online survey and follow-up process to share the results led by the Board Development, Governance or Executive Committee
- one-on-one conversations between current board members and the Board Chair, or Chair of the Board Development or Governance Committee
- completion of a survey asking questions about personal results (effectiveness) while serving as a board member, as well as the board's performance/effectiveness as a whole, with a follow-up session at a board meeting giving member the opportunity to share their assessments

Assistance developing a self-assessment tool and timeline suited to your mission and culture is available from NRMC through the risk-coaching component of this project, or through the Risk Help service available to Affiliate Members.

Facilities and Building Security

Introduction

This section of your report contains recommendations based on your answers to the questions in the Facilities and Building Security Module.

Renting Space for Special Events

Your agency rents additional space for special events, meetings or field trips. Renting space when needed can be an economical way to manage your agency's assets and fulfill its mission. You might rent a bowling alley for an outing, a room at the town library for a board meeting, an historic mansion for a fundraiser or a campground for an overnight field trip. No matter what the use, it's always wise to put the agreement in writing (even if--and maybe especially if--the property is owned by a "friend" of the agency). The rental agreement spells out the expectations and limits of both parties and thus may defuse many disputes before they occur.

Rental Agreement - Under the letter of the law, "rent" refers to property borrowed for a fee or for free. Rental agreements written by the owner/landlord serve the purpose of protecting the landlord. They are contracts and should be reviewed by the agency's attorney before being signed. The attorney can advise you whether or not you are getting the deal you discussed and whether you might protect yourself in other ways.

A rental agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the rental group. The following items should be considered for inclusion in the standard rental agreement, depending on the circumstances:

- **Maintenance and Upkeep:** While the owner typically remains responsible for any hazardous condition on the property in existence at the time of the lease, the rental agreement can establish who will be responsible for general upkeep such as trash pickup, repairing broken steps, clearing snow and ice, etc.
- **Indemnification Clause:** The agreement should include a provision holding the owner/landlord harmless for any negligent acts or omissions by the rental group during the term of the lease.
- **Instructions on Use of Property and Facilities:** The owner/landlord should provide detailed instructions on how its facilities operate or what to do if problems arise.
- **Limits on Accessible Areas:** If the rental group is only using a portion of the premises, or if certain areas are off-limits, those boundaries should be clearly established in the lease. Then, if a renter strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the renter takes the risk of the place as he finds it and the duty of the landowner is greatly reduced.
- **Potential Hazards:** Specific warnings about dangerous or hazardous conditions on the premises should be provided.
- **Delegation of Supervision:** Depending on the situation, the owner/landlord may need to provide its own staff members to assist with supervision. For example, if swimming is available on the premises, additional lifeguards may be required.
- **Alcohol Consumption:** If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the owner/landlord as an additional insured. Finally, the contract should include an acknowledgment by the rental group that no one under the age of 21 will be served alcohol.

Evacuation Plan

You indicated that your agency has an up-to-date evacuation plan. This is not only a wise risk management procedure, it is probably a jurisdictional (city, town, parish or county) requirement. If you are concerned that your plan may not be as thorough as it could be, check to make sure it contains the following elements:

- Conditions under which an **evacuation** would be necessary
- Conditions under which it may be better to [shelter-in-place](#)
- A clear **chain of command** and designation of the person in your business authorized to order an evacuation or shutdown
- Specific evacuation procedures, including **routes and exits**
- **Specific evacuation procedures for high-rise buildings**
- Procedures for **assisting visitors and employees** to evacuate, particularly those with disabilities or who do not speak English
- **Designation of what, if any, employees will remain** after the evacuation alarm to shut down critical operations or perform other duties before evacuating
- A means of **accounting for employees** after an evacuation
- **Special equipment** for employees

Although some agencies are reluctant to test their evacuation plan, not testing it can cause anxiety. Once the plan is complete, conduct evacuation drills no less than annually, and convene your team for a debrief to discuss what went well and how your plan can be improved.

OSHA's helpful publication on evacuation planning is available here: www.osha.gov/Publications/osh3088.pdf

Up-to-Date Bomb Threat Policy

You indicated that your agency does not have an up-to-date bomb threat policy applicable to all locations, or location specific up-to-date policies.

See the following resources for guidance:

- https://emilms.fema.gov/is906/assets/ocso-bomb_threat_samepage-brochure.pdf
- <https://www.safetyinfo.com/bomb-threat-planning-and-training-free-index/>

Sign in/Sign out Log

You answered that your agency doesn't use visitor sign in/sign out logs. Thus your agency has no idea who has entered your buildings on any given day, or if they ever left the building. For security purposes, anyone who isn't an employee - temporary employees, VIPs, consultants, contractors, volunteers and clients - should sign in upon entering your buildings and sign out when exiting.

ID Badges

You answered that visitors aren't required to wear identification badges while in your facilities. A visitor badge program helps quickly legitimize people in the building who aren't staff. The badge says the visitor has signed in at the reception desk or guard station and provided information about who they are and what their business is. All visitors should be instructed to turn in their badges prior to leaving the

building.

Badges may be all alike or color-coded to quickly identify various types of visitors and their business with the organization:

- temporary employees
- general visitors, such as contractors
- clients or volunteers

The word "Visitor" and the date should be readable from several feet away. Some badge systems include a photo of the visitor, and others include a bold expiration date. No matter how simple or fancy, the purpose is to monitor and record the entrance and exit of people who are not employees of your agency.

Visitor Escorts

You indicated that escorts aren't required for visitors in your building. This practice along with visitor logs and visitor badges provides a level of protection for employees and clients of your agency. Consider instigating this practice if you serve a vulnerable population, or if it would be easy for visitors to get lost or "lose themselves" while navigating your facility. This would be the case if you have many floors or a low building that spreads over a lot of ground or has many wings or corridors.

The receptionist or guard at the building entrance would phone the person being visited and ask the visitor to be seated until the escort arrives. The visitor log could have a space to indicate who the escort is for each visitor.

Building Codes and Licensing Compliance

You indicated that no one in your organization is responsible for making certain the building is up to code, your agency's licenses are up-to-date and your agency complies with federal standards such as the American with Disabilities Act. We recommend that you remedy this situation by appointing a person or persons (if you have a large enough staff and can divide the process) to monitor these three areas:

- building codes,
- licensing, and
- federal and state standards.

Requirements will vary based on the nature and types of services your agency provides. Professional organizations, regulatory agency websites, and colleagues at other agencies are potentially valuable resources in this area.

Assigning Responsibility for Routine Inspections

You indicated that your agency doesn't have one person who is responsible for routine inspections of your premises. You will want to remedy this situation as soon as possible. Making it one person's responsibility to inspect equipment, floors, food preparation areas, restrooms, and security measures on a schedule is basic risk management and can often be accomplished at little expense. The time devoted to insuring the health and safety of your employees, volunteers, clients and visitors will pay off many times over in claims that aren't filed against the agency for injury and accidents. You may want to develop checklists to make the process easier and consistent. File the checklists in chronological order so that you have a record of what was checked, when, by whom and what was found.

A sample checklist follows:

Safety Checklist

Yes

Lighting in stairways, entrances, emergency exits, parking areas and individual work areas is fully functional. (Switches work and "bulbs" are live.)

Exits are easily accessible and clearly marked. (Nothing piled in front of doors or in hallways).

HVAC (heating, ventilation, air-conditioning) system has been vacuumed and checked for leaks.

Hazardous materials such as paint, gasoline and toner, and cleaning supplies, such as bleach and ammonia, are clearly marked and properly stored in locked cabinets or closets.

Smoke detectors comply with building code type and placement, were tested and operate.

Fire extinguishers comply with building code and are appropriate type (chemical fire, open flame) for the area.

All exterior doors may be easily exited from the inside without a key, but aren't left propped open.

Windows are closed and locked at the end of day.

Exterior doors are closed and locked at the end of day.

Equipment is turned off (photocopiers, kitchen ranges, coffeepots).

Standard Maintenance Schedule

You indicated that your agency doesn't follow a standard maintenance schedule or keep a repair log. Your agency is missing an opportunity to manage risk and should seriously consider a way to take advantage of this relatively simple risk management tool.

Regular maintenance of equipment such as heating, ventilation and air conditioning systems, water heaters, kitchen ranges, ovens and vent hoods make the equipment run more efficiently and fulfill their functions. Such procedures also go a long way toward reducing the risk of accidents, injuries or illnesses from fire, poor indoor-air quality, heat stroke, or scalds.

Remember to include the following information in your maintenance schedules and repair logs:

- name of equipment with serial and model numbers, and manufacturer
- name, address and phone number of the store/supplier where purchased
- name, address and phone number of service contractor, date of contract, length of contract
- date of service
- detailed list of what was found and what was done
- name of service person

Provide a permanent place to store repair logs so that can be referred to when determining when to replace a piece of equipment, or to establish that the agency provided reasonable care when providing for the safe and efficient use of the equipment.

Prioritizing Safety Violations

You indicated that your agency doesn't prioritize safety violations ahead of other maintenance and repair assignments. This might mean that you schedule repairs based on:

- a set basis (It's the first Monday of the month, time to wax the floors.)
- the order of discovery (There's only 3 inches of mulch under the swings and we need 12.)
- what the budget allows (A new donation will let us replace the chain and padlock on the back door)

with a working deadbolt lock.)

We suggest your agency revise this approach and replace it with a more beneficial strategy. While the chain and padlock on the back door will secure the premises, your agency risks damage to its reputation, its people, the building and the contents by not having a working exit in case of fire. A working security system that allows easy and immediate exit is a priority your agency can't afford to put off. Something else should give so that this repair work can be completed without delay.

Human Resources and Employment Practices

Introduction

This section of your report contains feedback and recommendations based on your answers to questions in the Human Resources and Employment Practices Module.

This report contains recommendations in the area of employment practices. Every agency with paid staff faces the possibility of a claim or lawsuit alleging illegal or unfair employment practices. The financial and other consequences of a claim can be substantial or devastating. Every organization can take steps to reduce the likelihood of a claim, and ensure a strong defense to charges of wrongdoing.

As you review these recommendations, remember that obtaining the assistance and advice of an employment attorney licensed in your state is absolutely essential to protecting your agency's assets and good name. Your mission is too important to risk losing it all in a suit you could have avoided.

Multiple Locations

You indicated that you do not employ workers at more than one location. While a structured approach to employment practices is advisable for all employers, it is particularly important for agencies with large workforces or workers deployed at more than one location. If your agency ever grows to include multiple locations, you should conduct a thorough review of your employment practices and carefully consider how information on these practices is disseminated to all locations. An important goal is ensuring that all employees receive timely notification of policies and practices.

The Human Resources Function

A cornerstone of effective and legal employment practices is the development and consistent application of sound policies. Unfortunately, some organizations develop and administer employment policies in an ad-hoc fashion. Where practical, it is advisable to centralize the human resources function. You indicated that responsibility for human resources in your organization is centralized in a position or department. This is an excellent first step to ensuring the development of coherent and effective policies.

Periodic Review of Employment Policies

You indicated that you do not have a process in place to ensure the periodic review of your employment practices. How often you review these practices depends on a number of factors, including your agency's hiring frequency, rate of turnover, employee satisfaction, resource constraints or opportunities, and size. Organizations facing rapid growth or high turnover should review hiring strategies and results semi-annually. All aspects of the recruitment and selection process should be considered in light of the organization's hiring goals and commitment to not pursue strategies that adversely affect a protected group of applicants. Smaller organizations or those with very low turnover may choose a less rigorous schedule, such as annually.

The Board's Role

You indicated that your organization's board approves major changes to the Handbook or Manual. This practice is relatively common in the nonprofit sector. The executive director may have authority to implement new policies from time to time, such as adding an Office Technology Policy, but changes to

the Handbook require board review and approval.

Remember that every board should be certain that its employment policies comply with applicable federal and state laws. The board should seek guidance and assurance on this matter from an employment attorney licensed in the state in which the nonprofit operates. In addition, each board should be confident that the nonprofit's managers and supervisors are applying the policies uniformly. Board members should bring any concerns about special or preferential treatment to the attention of the chief executive officer.

Legal Review of Written Policies

You indicated that your Employee Handbook was reviewed by an employment attorney licensed in your state before it was distributed. This is an excellent practice and we urge you to obtain further review and counsel before making any changes to this important document.

You indicated that your Employee Handbook was reviewed by an attorney during the past year. We urge you to continue the practice of obtaining regular review of your Handbook by an attorney with expertise in employment matters. This practice will go a long way to protecting your organization from making costly missteps or creating unnecessary vulnerabilities in establishing and administering employment policies.

Policy Changes

You indicated that when a new employment policy is developed, the Employee Handbook is updated and redistributed. While this practice ensures that an up-to-date and complete list of employment policies is readily available to each employee, for most nonprofits this practice is too unwieldy. In addition, by distributing a new Handbook altogether, the changes from the prior version may not be obvious. Therefore, if you are distributing a new Handbook each time a policy change is made, you should probably include a cover letter that highlights the key changes, or require that employees reread the entire Handbook in its entirety. Also, if you're not already doing so, consider requiring that each employee sign a new acknowledgement indicating receipt, understanding and acceptance of the policies contained in the updated Handbook, such as:

"I hereby acknowledge that I have read and agree to abide by the policies of the [name of Nonprofit] as outlined in the revised Personnel Policy Manual [or other name of document, such as Employee Handbook] provided to me on [date of distribution], which I acknowledge supersede and replace all prior policies of the [name of Nonprofit].

Signature

Date

Legal Review Prior to Implementing Policy Changes

You indicated that you consult an employment attorney before revising existing policies or adopting new policies. It is prudent practice to request a legal audit of existing policies and seek an employment lawyer's recommendations for revisions. Another way to approach the review is to meet with key staff and any other personnel-related resources at your disposal and request suggestions on policies that they would like to see changed. With firm objectives in hand, consult legal counsel, who can recommend how to coordinate the nonprofit's objectives with legal obligations.

Tracking Policy Distribution

It is prudent to request newly hired employees, whether in the offer letter, during orientation or another time, to sign an acknowledgement of receipt of personnel policies that includes a commitment, signed by the employee, to adhere to the policies. We recommend that you keep these acknowledgements in employee personnel files.

Confirming Receipt of Revised Policies

Be sure to keep a copy of each employee's acknowledgement in their personnel file. In one instance an employer could not prove that a particular employee had received the newly revised version of personnel policies and therefore the former version of the policies applied to her termination. The court required the employer to re-hire the employee because her termination, under the prior policies, was found to be invalid.

Preserving Management Discretion

Every Employee Handbook or Personnel Policy Manual should include a statement indicating that management has the right to make changes to the organization's employment policies. This statement calls an employee's attention to the fact that changes in the organization's employment policies are possible and that they should not rely on any promises made in the Handbook as unchangeable.

Workplace Violence Policy

You indicated that your nonprofit has a workplace violence policy. This reflects your understanding that violence is a reality in many workplaces today. Nonprofits, like other employers, need to train staff to be aware of the risk of workplace violence. Review your current workplace violence policy to make certain that it includes:

- Zero tolerance for violent, abusive conduct, threats of violence, or violent language;
- A complaint procedure;
- Emergency procedures in the event of any serious act of workplace violence;
- Designation of management personnel and security personnel who will be responsible to investigate complaints of violence and who will be responsible in the event of an emergency;
- Reservation of management's right to review employee e-mail, voice mail, and computer files.

While policies and raising awareness cannot completely insulate any nonprofit from the risk of workplace violence, the fact that the nonprofit has undertaken good faith efforts to educate and prepare staff for emergencies, and has acted promptly to address concerns of the incompetence of staff or threats of workplace violence, conveys the message that safety is a primary concern.

Technology Policy

A comprehensive office technology policy should address privacy and appropriate conduct concerns. Consider reviewing your current policy to make certain that it:

- Prohibits or limits personal use of the Internet and e-mail while at work and prohibits personal use of the nonprofit's hardware and software or copying of the nonprofit's software;
- Defines the systems used at work as the property of the nonprofit;
- Prohibits use of the telephone, facsimile, or e-mail system for the dissemination or solicitation of information about for-profit ventures, religious beliefs or political causes, or any non-job-related business;
- Prohibits use of the telephone, facsimile or e-mail system to create or transmit any offensive,

hostile, sexually explicit or suggestive messages, racial slurs, gender-specific comments or any comment that is unprofessional or offensive regarding someone's age, race, color, creed, sexual orientation, religious beliefs, national origin, gender, disability, marital status or any other protected category;

- States that the nonprofit's e-mail system may not be used to upload or download any protected, copyrighted, or proprietary information;
- States that the nonprofit reserves the right to review, audit, intercept, access and disclose all messages created, received, or sent through voice mail, facsimile or the e-mail system for any purpose, and that the content of such communications may be disclosed by the nonprofit for any purpose with or without notice to the employee;
- States that the confidentiality of any message transmitted over the nonprofit's telephone, facsimile or e-mail system should not be assumed;
- States that the use of a password does not indicate that the employee should have any expectation of privacy in computerized communications; and
- States that the nonprofit will discipline any employee who violates the office technology policy, and that violations may result in termination of employment.

Workplace Privacy Policy

You indicated that you currently have a Workplace Privacy Policy. We recommend that you review your policy to make certain that it:

- reminds staff that work areas (including desks, filing cabinets, etc.) are the property of the nonprofit.
- requires that employees consent to monitoring.
- cautions employees not to have an expectation of privacy in voice mail, e-mail or requires consent to monitoring.

Sexual Harassment Policy

You indicated that your Employee Handbook includes a policy specifically prohibiting sexual harassment. As you know, the risk of liability for harassment may also come from outside the organization: clients, vendors, consultants, board members, or a member of the general public could pose a threat of sexual harassment to your staff. Your written policy sends a message to staff that the organization will not tolerate harassment and helps ensure that your staff will know what to do in the event they experience or observe prohibited harassment.

Your policy should also require the reporting of observed or experienced harassment at the workplace. It is to the employer's advantage to have knowledge of alleged wrongdoing. Once the nonprofit knows of allegations of improper conduct, steps can be taken to minimize the potential harm to victims -- and in so doing to minimize potential liability to the nonprofit. By taking swift and effective remedial action, many employers have been able to reduce their liability or eliminate it altogether.

Congratulations on having a written policy in place. We recommend, however, that you review your policy to make certain that it:

1. defines prohibited conduct;
2. encourages reporting of any offensive conduct *before* it rises to the level of a hostile environment and imposes no barrier on reporting complaints, such as requiring that complaints be in writing;
3. requires the reporting of observed or experienced harassment at the workplace;
4. explains the rights of complainants under the policy (such as not to be retaliated against and to

- have complaints and the investigation file maintained in confidence);
5. describes procedures for the investigation of complaints;
 6. contains a description of the consequences for breach of the policy; and
 7. provides at least two persons to whom the employee can report complaints to avoid any claim that the employee is excused from reporting because the person designated to accept complaints was the harasser, or a friend of the harasser.

Internal Complaint Procedure

You indicated that your Handbook describes your internal complaint procedure for sexual harassment. The burden on employers to promptly investigate and respond to complaints has increased in recent years. A well thought-out and prescribed complaint procedure is an excellent risk management tool. It sends a strong message to your employees that you intend to follow-up on any complaints of harassment and takes the guessing out of the process when an actual complaint is received.

Job Descriptions

Job descriptions should be used during the hiring process so that candidates for a position can review the job description and answer the question "Are you able to perform all the functions of this position?" Make sure that your written job descriptions are up to date and describe "essential functions." Identifying the essential functions is necessary in the event that an employee becomes disabled and there are concerns whether the employee is qualified. Essential functions are those tasks which are essential to the job. Examples are: the ability to lift a certain number of pounds, drive a van, carry a child, or raise arms over head. It is also helpful if the job descriptions identify whether the position is "exempt" from overtime or "nonexempt."

Employment Applications

Written applications for employment are useful risk management tools. They ensure that an organization collects basic information on all applicants for a position, and provide an opportunity for the nonprofit to convey key policies or practices to applicants and include written safeguards that will protect the nonprofit if its hiring practices are challenged. For example, the organization can require that all applicants attest to the truth of information provided in an application and acknowledge that the subsequent discovery of false information on an application is grounds for immediate dismissal.

We urge you to consider using an application form for positions with your organization. Consider including the following items on your application form:

- *an at-will employment disclaimer that expressly states that the applicant understands that employment with the nonprofit is on an at-will basis.* Although the disclaimer may be featured prominently in your Employee Handbook and contained in your hire letters, it is wise to add the disclaimer to your application form. It is important to do so because a former employee may claim that a promise of job security was contained or implied in the application.
- *a truth clause or false information warning.* A truth clause alerts the applicants that material misstatements on the application form may be grounds for refusal to hire or for termination if the falsity is discovered after the applicant is hired. A truth clause informs applicants about the importance of responding to the questions on the application truthfully, and specifies the consequences for failing to do so. This is a good risk management practice. Like other policies, however, this policy should be strictly enforced.
- *an authorization to conduct record checks (criminal history, credit, etc.).* Remember that whether to conduct a certain check should be determined by the risks of the position, not the particular

applicant. The decision to check these records should be based primarily upon the specific responsibilities of the position and there should be valid business reasons for disqualifying someone due to a prior criminal history. If operating a motor vehicle is not part of the position description, then why check driving records? If the position does not call for handling money or other organizational assets, then why check credit bureau records? If the position involves only group contact under close supervision, are criminal history record checks necessary? Also, many jurisdictions have adopted 'ban the box' laws that prohibit asking about prior criminal convictions on the application for employment. Always check with your counsel to determine when, and how, your agency may inquire about criminal history. Record checks can be useful screening tools if used to supplement fundamental screening tools such as applications, interviews, and reference checks. Any organization using background checks must make certain that the use of record checks is justified by a legitimate, job-related purpose. If that purpose exists, it is good risk management practice to include a disclosure/consent form before conducting a records check.

- *authorization to check references.* In recent years, nonprofit employers have been frustrated by the increasing reluctance of employers to provide meaningful references on former employees. It is important to try to obtain substantive, work-related references. By making a good faith effort to obtain background information you help protect your nonprofit from claims of negligent hiring. Obtaining the applicant's consent to check references is a good practice and required under the Fair Credit Reporting Act (FCRA) if your nonprofit uses a third party to conduct reference checks on your behalf.

Consider adding a reference authorization statement to your application. Here's sample consent language for your consideration:

"I hereby consent to permit [Name of Nonprofit] to contact anyone it deems appropriate to investigate or verify any information provided by me to discuss my suitability for employment, background, past performance, education or related matters. I expressly give my consent to any discussions regarding the foregoing and I voluntarily and knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar cause of action, against anyone providing such information."

Applicant's Signature

Date

Interview Guide

You indicated that your nonprofit does not use an interview guide as part of your hiring process. It is very important to treat all candidates for a particular position consistently during the hiring process so that the organization can evaluate their qualifications for the position, and demonstrate that the selection process was objective and job-related. One commonly recommended procedure is to ask all candidates for the same position the same questions during an interview. This prevents an untrained interviewer from straying into territory that can result in illegal interview procedures. To guard against this risk, most authorities recommend the use of a script or interview guide so that questions deemed discriminatory are not asked.

Interviews are the most common selection procedure. They are also the most subjective. To avoid the appearance of discrimination, it is helpful if interviews are conducted by more than one staff member. The use of an interview guide can reduce the chance that an impermissible question will be asked. It is also advisable to train staff members who conduct interviews in interview techniques so that they understand which questions raise liability concerns. No matter where they are maintained, notes by interviewers should be restricted to job-related comments or impressions of the applicant's qualifications for the position.

Many nonprofit managers wonder what questions are impermissible in job interviews with candidates. Twenty-three states have published guidelines for "pre-employment inquiries" which set forth examples of the questions which may and may not be asked in that state. The Fair Employment Practices Agencies of the following states have published such guidelines: Arizona, California, Colorado, Delaware, Idaho, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Dakota, Utah, Washington, West Virginia, and Wisconsin. Copies of these guidelines can be obtained directly from the state agencies.

If a protected category is named in any of the federal anti-discrimination laws or in the state's statute, no employment decision may be based on the fact that the applicant or employee is a member of that protected category. Instead, the applicant's objective, job-related qualifications for the position must be the deciding factors.

The only exception to this rule is when the protected characteristic is a "bona fide occupational qualification." (Example: Being female is considered a legitimate, bona fide occupational qualification for the position of attendant in a women's locker room. A male applicant for the position can be rejected simply because of his sex.) Public and private safety can also create exceptions. For instance, the Americans with Disabilities Act provides a narrow exception which permits employers to turn down a qualified applicant with a disability if the applicant would pose a direct threat to the safety or health of the applicant or other individuals in the workplace. However, this exception has been interpreted narrowly.

In general, hiring decisions should not be based on any characteristics which are listed in the state or federal laws as protected categories.

State law guidelines must be followed when asking applicants questions during the selection process, whether on the application or in the interview. In states with no published guidelines, follow the rule-of-thumb to ask only those questions that are truly job-related. An appropriate risk management strategy in hiring is to base selection decisions on the applicant's qualifications and to document that the chosen applicant was more qualified than others considered for the same position. When a nonprofit can demonstrate that an applicant was selected because he or she was the most qualified - not because others were discriminated against - the nonprofit is in the strongest position to defend against allegations of illegal discrimination.

Reference Checks

You indicated that you always check references, either before making an offer of employment or before a new hire begins work. This is an excellent practice. Reference checks are among the most valuable screening tools at your disposal. Remember that if a candidate does not provide work-related references, you should press him or her to do so. If you discover a discrepancy between the information provided on an application and the information obtained from a reference, you should always investigate further. This investigation might include asking the candidate to clear up the discrepancy, calling additional references, or verifying credentials directly.

Documenting the Hiring Process

You indicated that you may not document your hiring process carefully. Doing so is essential to demonstrating that a hiring decision was based on legitimate grounds. Adequate files should show consistency in your hiring procedures, specifically that the same questions were asked of *every* candidate for a given position, both on the application and in any interviews. No matter where they are

maintained, notes by interviewers should be restricted to job-related comments or impressions of the applicant's qualifications for the position.

Typically the hiring process will yield the following documents: job description for position applied for, copy of newspaper advertisement or internal job posting, resume, completed application form, signed authorization for background check, notes from reference checks conducted by telephone, written responses from previous employers to questions concerning work history, interview script/notes taken during interview, new hire letter/rejection letter, and results of criminal background check, credit history check and motor vehicle check, as applicable. With the exception of the results of the criminal background check and credit history check (which should be destroyed after they have served their purpose), all other hiring documents should be maintained by the nonprofit for at least one year, preferably three years, after hiring, or six months after the candidate's application became inactive (candidate was disqualified or rejected). Keeping each of these documents is critical to demonstrate that each candidate was treated in the same way and that the selection process was based on objective, job-related criteria.

Hiring Checklist

You indicated that you do not use a hiring checklist in your hiring process. A hiring checklist is a potentially useful tool that helps an employer avoid missing key steps in a legal and thorough hiring process. It is particularly important in an organization where more than one person hires staff - typically any nonprofit with more than a handful of staff. While different staff members may value certain aspects of the hiring process differently (for example, one supervisor may see references as critically important, while another believes that the interview is the most important screening tool), the use of a hiring checklist helps ensure consistency and avoid missteps in the way an organization approaches hiring.

A typical hiring checklist contains items to "check off" under the following categories:

- *Application review* (questions might include whether the applicant signed all of the disclaimers on the application, whether the applicant's experience has any direct bearing on the qualifications for the open position, whether there were any gaps in employment history, and whether the applicant's cover letter (if applicable) was grammatical and professional in appearance as well as style).
- *Reference Checks* (questions might include whether all key credentials were verified, whether a criminal or credit check is necessary for the position and if so whether it was conducted, and whether the applicant's work-related references report satisfaction with his or her past performance).
- *Interview Outcomes* (questions on the checklist might include whether a script was used for the interview, whether the applicant was provided with a written job description before or during the interview, the interviewer's factual observations with respect to job-related experience, skills or background).
- *Determination Concerning Qualifications for Position* (questions might include whether the applicant meets all of the minimum educational qualifications for the position, licensing requirements, whether the applicant has references unqualified in their support for the applicant, and whether the applicant's previous work or volunteer experience indicate a set of skills or specialization which meets or exceeds the requirements for the position).

Offer Letters

A written offer letter is a practical way in which to confirm details about an offer of employment. It is a risky practice to convey an offer of employment orally. Starting an employment relationship on the right

foot requires a shared understanding of the basic terms of employment. A properly worded written offer letter will reduce the likelihood of a subsequent misunderstanding about basic terms of employment. It also provides an opportunity for an employer to obtain a prospective employee's acknowledgement of the terms of employment. An offer letter may increase the risk of a subsequent employment-related claim, however, if it is worded inappropriately or if it contains promises or commitments the employer is unwilling to live up to.

We recommend that you consider using written offer letters.

You indicated that your offer letters do not contain information about any of the following: initial period of employment (introductory period), annual salary, salary review date, eligibility for benefits, duration of employment, potential for advancement, or job rights. While you may have reduced the risk that information contained in an offer letter contravenes established employment policies, the value of an offer letter without any of this information is questionable. Consider asking an employment lawyer to review your offer letters and comment on the advisability of including pertinent details.

Initial Work Review Period

You indicated that new employees serve an initial work review period. Review your policy to make certain that successful completion of the first few months of employment does not ensure job security or in any way conflict with your employment-at-will policy. Make certain that you have defined the purpose of the work review period in your written policies, noting that completion of the work review period does not increase an employee's rights in a job. Consider using language such as:

"An initial work review period is a training and get-acquainted period, completion of which does not guarantee continued employment. Following completion of this period, you still may resign and the organization has the right to terminate your employment at any time, with or without cause."

Employee Orientation

You indicated that you have an orientation program for new employees. This is a good risk management strategy, and may help ensure that all new hires receive the same, thorough orientation to the nonprofit's policies. From a legal perspective, a formal orientation program where policies are explained provides a defense to a claim that an employee was not informed about a specific policy. But providing an orientation with out-of-date, incomplete or inaccurate materials may be more risky than never conducting one in the first place. Review your orientation format and procedures to make certain that all policies distributed and explained to new hires are current.

You indicated that you maintain up-to-date personnel files for each employee. This is an excellent risk management practice.

Performance Appraisals

You indicated that you conduct annual performance reviews for each employee. This practice is essential to (1) put employees on notice of unsatisfactory performance, and (2) articulate in an objective manner the goals and objectives for the employee's performance. In this way, employees are aware of their shortcomings and the nonprofit is in a strong position to support a discharge for poor performance. The practice of conducting regular, objective performance appraisals will also ensure that your organization is able to defend itself against charges of discriminatory employment practices.

A growing number of cases have reached the courts in which inadequate or nonexistent performance appraisals were the principal determining factor in a judgment for damages against an employer.

Typically the litigation is brought by someone fired or denied a promotion, who then claims to be the victim of race, sex or age discrimination. The employer defends itself by claiming that the plaintiff simply wasn't doing his or her job. The plaintiff easily rebuts the employer's case by showing that his performance appraisals never mentioned any concerns or disappointments with performance. Employers that can present strong performance appraisal documentation are in a good position to defend their actions, whereas those that do not have written support for their position most often face liability. Consequently, evaluating the performance of staff and documenting the process carefully is "where the rubber meets the road" in employment-related risk management. Most often if there is a smoking gun in an employment action, performance appraisals (or the lack thereof) are the weapons of choice.

Evaluating performance is sound management and critical for the long-term health and prosperity of the nonprofit. In most cases the nonprofit's staff members are among the organization's most valuable assets. Staff influence the public's perception of the nonprofit, provide services to clients, and may be responsible for the welfare of vulnerable individuals on a daily basis. When staff can see how their own work successfully supports the achievement of the nonprofit's goals, a more effective organization will result.

If you are not already doing so, consider adding the review of performance appraisals by an administrator one tier above the actual supervisory relationship. This review can expose subjective comments or inconsistent rankings. The objective review is also an opportunity to evaluate how well the supervisors are conducting their roles as job coaches. In order for the objective third-party review to be effective, you need to work out a schedule for annual or six-month reviews which permits an extra period of time for the objective reviews. The objective reviews should occur prior to the employee's receipt of the formal review, in order to allow time in the event the reviewer challenges what is written and the appraisal needs to be revised.

Narrative Versus Multiple Choice Ratings

Some experts believe that the most insightful appraisal format is pure narrative because supervisors are then forced to describe the employee's performance and can't make the mistake of checking a box that doesn't apply. However, narrative responses are also legally risky because a supervisor's comments might go off on a tangent that is irrelevant and subjective, or fails to support the rest of the appraisal. Or supervisors may put the nonprofit at risk by writing observations about performance that are not job-related and therefore inherently inappropriate. Most appraisal forms feature a combination of narrative and rating questions. Often there is a summary statement or rating which is useful when a distinction based on performance is required between similarly situated employees.

Performance appraisal software and human resources consultants are available to help customize appraisal forms. Customization is recommended over simply borrowing a format from another workplace. However, many nonprofits successfully borrow forms developed for another organization, and then customize those forms as they discover what works and what doesn't.

Remember that a senior manager or the executive director should review completed appraisal forms before they are shared with an employee. The purpose of this review is to make certain that the review does not contain inappropriate information or anything that is inconsistent with the organization's policies. For example, a statement on a review indicating, "I'd like to see Mary retire from this organization" could contravene the nonprofit's employment-at-will policy.

Third Party Review

The best insurance against any pitfall in the performance appraisal process is an objective review by an

administrator one tier above the actual supervisory relationship. This review can expose subjective comments or inconsistent rankings and provide an opportunity to evaluate how well the supervisors are conducting their roles as job coaches. You indicated that a third-party review is not currently part of your process.

In small nonprofits, size alone may prohibit the use of an inside, third-party reviewer described above. Consider using an objective third-party who is not an employee, such as your employment attorney or a board member who serves on the personnel committee. Using an outside person will be far easier if you synchronize reviews for the organization and conduct them all at the same time each year.

The purpose of this review is to make certain that a completed appraisal does not contain inappropriate information or anything that is inconsistent with the organization's policies. For example, a statement on a review indicating, "I'd like to see Mary retire from this organization" could contravene the nonprofit's employment-at-will policy.

In order for the objective third-party review to be effective, you'll need to work out a schedule for annual or six-month reviews which permits an extra period of time for the objective reviews. The objective reviews should occur prior to the employee's receipt of the formal review, in order to allow time in the event the reviewer challenges what is written and the appraisal needs to be revised. The extra time and effort required to adjust your performance review process will be a valuable investment.

Training Supervisors to Conduct Reviews

You indicated that you currently train or coach supervisors on the implementation of your performance review system. This is an excellent practice that should be continued.

Consider reviewing your training or coaching program to make certain it addresses the following issues:

- The common reluctance to provide a candid review. Suggest strategies for communicating "bad news" in a respectful fashion and explain that an individual who is unable to convey bad news or impose discipline on an employee risks disqualification from supervisory status.
- The importance of providing ongoing feedback. Inform supervisors that they should never wait until the annual review to communicate dissatisfaction with an employee's performance. They should also remember to document any performance counseling sessions, making certain that these reports are signed by the employee and retained in the personnel file. The supervisor's notes - if not signed - may be disputed.
- The legal significance and importance of candid reviews. Written performance reviews are an organization's best evidence of whether an employee is meeting, surpassing or failing to meet the organization's expectations. Someone who is unwilling or unable to provide candid reviews of performance should not be allowed to continue in a supervisory capacity. The notion that a favorable review will motivate improved performance is untrue. Explaining to an employee why his or her performance falls short of the nonprofit's expectations remains the best strategy to motivating improvement.

Multi-Source Assessments

The newest trend in performance evaluations is a multi-source assessment, also known as the "360 degree" evaluation. In this system each employee's performance is assessed by several, rather than only one, appraiser. Typically the supervisor reviews the subordinate, who may also be reviewed by the employee himself, and by clients, peers and vendors. In turn, the supervisees provide comments on their supervisors' performance. Usually the data on each supervisor is collected anonymously and bypasses the supervisor, going directly to the supervisor's supervisor for evaluation, in order to provide insurance

against real, or perceived, retaliation.

As supervisors and subordinates become more comfortable with the process, supervisors can directly review feedback from their own subordinates. While the potential for helpful information using a multi-source appraisal system is great, there can be problems with the credibility of the feedback if staff are cynical and concerned that the feedback is an opportunity for retribution against an unpopular supervisor. Alternately, such a system could be seen as an opportunity for "deal-making: "I'll give you a favorable rating if you give me one...". In theory, the idea of a multi-source system is supposed to provide the highest level of management with a good sense of the effectiveness of the organization's supervisory staff. In practice, collecting such data as part of the formal appraisal system may not yield the most reliable results. Nonprofits must first have a culture of trust and honesty in order for 360-degree evaluations to be taken seriously. Many nonprofits find that facilitating roundtable discussions with staff about effective supervision and in extreme cases, arranging an internal arbitration between supervisors and supervisees is as effective as a formal system of multi-source evaluations.

Merit Raises

More and more nonprofits are moving to a "merit raise" system that rewards strong performance with the possibility of a higher salary adjustment. Some award merit raises in addition to cost-of-living (COLA) increases. A merit raise system provides an incentive for employees to improve performance. It also rewards strong performers, helping with the nonprofit's ability to retain the most effective employees. A common way to structure a merit raise system is to create a salary scale which assigns a certain percentage or range of percentages for salary increases in each of several categories. The categories correspond to the rating system on the performance appraisal instrument. Each employee is eligible for whatever percentage raise is appropriate given the range for the rating assigned to that employee. For example, "Unacceptable" would merit no increase. "Meets expectations" would merit a 1-3% increase, "Exceeds expectations" would earn a 3.5%-4.5% increase, and "Greatly exceeds expectations" would be awarded a 5%+ increase. In this way, the CEO, finance or personnel committee can determine the budget for salary and compensation for the coming year by looking at historic data on the number of employees in each salary and performance range.

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Identification of Disqualified Persons

You indicated that your agency has not identified who is a 'disqualified person' under IRS regulations. A disqualified person is any person who was in a position to exercise substantial influence over the affairs

of a tax-exempt organization during the 'lookback period.' To learn more about the concept of disqualified person, the definition of lookback period, and what your nonprofit should do to reduce the risk of intermediate sanctions, see:

- [Disqualified Person - Intermediate Sanctions](#) - IRS
- [How to Stay Exempt - Exemption Requirements for Nonprofits](#) - IRS
- [Intermediate Sanctions: A Brief Overview for Tax-Exempt Organizations](#)

Progressive Discipline Policy

You indicated that you *do not* have a Progressive Discipline policy. Progressive disciplinary procedures are those requiring that the first instance of a performance failure be treated as a warning, with successive occurrences resulting in more serious disciplinary measures. The goal of progressive discipline is to formally communicate problem issues to employees in a direct and timely manner, so that the employee may improve his or her performance. The first warning in a progressive disciplinary system is the equivalent of notice to the employee of a performance failing.

Progressive discipline is usually a series of three warnings - three strikes and you're out. The disciplinary progression goes like this: first offense = verbal warning (which is documented); second offense = written warning; third offense = final written warning or suspension pending discharge.

In general, only gross misconduct and serious violations of the nonprofit's policies justify skipping the first warning phases of progressive discipline and imposing more serious discipline in the first instance. The progression of disciplinary steps set forth in the nonprofit's Employee Handbook should be followed whenever possible, unless starting with a verbal warning would be illogical, as in a situation where an employee brings a weapon to work.

Progressive discipline, if consistently applied and with flexibility for unusual cases, can be an effective risk management tool because it affords some assurance of fundamental fairness. The downside of progressive disciplinary policies is that they can create contractual obligations. If not carefully drafted, in most states policy language can be binding on the nonprofit under the theory of implied contract. Another downside of progressive discipline is that because the policy lists disciplinary steps in a certain order, the nonprofit's flexibility to select appropriate disciplinary action on a case-by-case basis can be greatly reduced. Even with language that states that the disciplinary policy is not a contract, employees will expect to be treated as described in the policy, so fundamental fairness dictates that the progressive disciplinary procedures be followed unless the employee is given notice otherwise. "Taking the high road" in employment practices requires an employer to live up to its promises, and employees regard policies as promises.

Despite the risk of breach of contract claims, use of progressive discipline is a positive and prudent practice for every nonprofit to embrace because it meets the obligations of fundamental fairness by giving employees notice about their performance failures and the disciplinary consequences. We caution that progressive discipline policies should be carefully drafted and reviewed by an employment lawyer to ensure that the nonprofit will not be needlessly vulnerable to claims of breach of contract. In order to give the nonprofit the most flexibility, it is advisable to draft progressive discipline policies as guidelines, rather than set procedures to be followed in all cases.

Opportunity to Correct Deficiencies

It is prudent to provide an opportunity for employees to correct deficiencies before you take adverse action against them. We urge you to continue this practice.

Third Party Review Prior to Termination

We urge you to continue the practice of having a person other than the affected employee's supervisor review the written record before an employee is terminated. This practice enables the organization to make certain that the action taken is supported in the written record, legally defensible, and consistent with action taken towards other employees.

Financial Reporting and Internal Controls

Introduction

This report section contains recommendations based on your answers to the questions in the Financial Reporting and Internal Controls Module. As a reminder, the assessment topics were: Fiscal Oversight, Financial Reporting, Financial Planning and Forecasting, Budgeting, Financial Monitoring, Contracts and Grants Management, Managing Fraud Risk and Internal Controls, Investments, Fiscal Policies and Audits.

As you review and consider these recommendations, keep in mind that some recommendations may need to be revised or tailored to suit your agency's unique structure or circumstances. In addition, remember to ask key advisors for their guidance and insights, including your internal finance team, board-level Finance Committee, Audit Committee, and any external finance advisors or audit firms.

Board's Ability to Discharge Fiscal Oversight Responsibilities

You indicated that you have 'moderate' confidence in the ability of your board to discharge its fiduciary and fiscal oversight responsibilities. Lack of confidence in this area is sometimes due to concern that some members of the board don't fully grasp the implications of your financial statements, or in some cases, board members may focus on small dollar issues and miss the big picture trends.

To help your board discharge its responsibilities in these important areas, consider:

- Planning and convening an annual workshop on nonprofit financial statements; invite a qualified volunteer or consultant to discuss the structure of nonprofit financial statements generally, followed by a deep dive into your agency's statements
- Including narrative explanations of your financial statements along with spreadsheets and reports such as the Statement of Financial Position, Statement of Activities and Statement of Cash Flows. Your narratives should alert the reader to high points, low points, and also trends.
- Developing a fiscal dashboard that shows financial results over several years. Make certain that the scale of the dashboard is appropriate and shows trends clearly.
- Including a report on key financial indicators (sometimes called key performance indicators) in your regular reports to the Finance Committee and Board. A list of [Nonprofit Financial Stability KPI Recommendations](#) is available from the [Human Resources Council](#). A downloadable [Ratio Calculation Worksheet](#) is available from [Propel Nonprofits](#) (formerly the Nonprofits Assistance Fund).

Financial Forecasting

You indicated that your agency does some financial forecasting, but it tends to be relatively short-term. We recommend that you consider the following strategies to strengthen financial forecasting:

- Ask members of your Finance Committee, Board and audit firm if they are able to recommend forecasting tools or resources used in their own organizations.
- Use rolling forecasts and require operating teams to update financial projections monthly or quarterly. Increasing the frequency of your forecasting will provide a more accurate picture and allow for more nimble management of staff time and financial resources.
- Identify key external drivers that could potentially impact financial results. Note a short list of drivers in forecasting reports.

- Visit the websites of [The Wallace Foundation](#) and [Resource Library](#) of the Nonprofits Assistance Fund for additional financial planning resources that may be helpful in your efforts.

Inclusive Budgeting Process

You indicated that your budgeting process is not as inclusive as you would like it to be.

According to Propel Nonprofits (formerly the Nonprofits Assistance Fund), "a budget is just another version of a mission statement or strategic plan expressed in a different language, the language of numbers. In order for this to be true in practice, a budget must be the cumulative effort of all who implement the organization's mission..."

To begin the process of developing a more collaborative budgeting process at your agency, check out the following resources:

- Download Propel's [10 Step Budgeting Checklist](#)
- Download The Wallace Foundation's [5-Step Guide to Budgeting for Nonprofits](#)

Financial Monitoring

You indicated that your leadership aspires to engage in more thorough financial monitoring. Effective financial monitoring will assist you in anticipating any issues that may arise with respect to finances. Utilizing the following recommendations will assist in financial monitoring.

Use the annual budget process - Using the budget as a tracking method helps with awareness of month-to-month financial conditions. When creating an annual budget, we recommend using more than just the previous year's actual financials to estimate the budget. Having just one year of information can skew projections to either the high or low end and create unreasonable expectations for financial projections. In general, budgets should be realistic, tied to the organization's goals, and utilize a similar format as the organization's accounting system. The latter helps with consistency in reporting and promotes understanding by the executive team and the board and its committees.

Review financial statements on a regular basis - Organizations can create unaudited reports for their executive leadership and / or board in order to track financial activities as well as the current financial state of the organization. Executive teams should be reviewing this information on a regular basis and be prepared to answer questions about positive or negative trends. Although a full board may not meet frequently enough for monthly reviews, a finance committee could make arrangements for reviews in between board meetings in order to provide some financial oversight and catch problems before they grow.

Background Checks

You indicated that your nonprofit doesn't conduct criminal history background or credit checks as part of the screening process for prospective employees who will be handling cash or managing significant financial transactions. Minimizing the chance of fraud losses begins with reducing the opportunity to defraud your agency of financial resources. Consider adding background checks for finalists for any positions with responsibility for handling funds, whether those funds are in the form of cash, check, or wire transfer. Keep in mind that if you use a third party to obtain consumer reports on prospective hires, you must comply with the provisions of the [Fair Credit Reporting Act](#) (FCRA). Also, check whether your state or locality has a ['ban the box'](#) law prohibiting some or all employers from asking applicants about prior criminal convictions on the initial application for employment. These laws do not prohibit the use of background checks altogether, but require that employers wait to conduct background checks

until a later hiring phase.

Daily Deposits

You indicated that receipts are not deposited intact on a daily basis. Just as you wouldn't keep large quantities of cash under your mattress, the safest place for your organization's cash and securities is in the bank. Funds that are on your premises or in the possession of an employee or other individual, are subject to theft, loss, or accidental destruction. Also, if you have an interest bearing account, undeposited funds represent lost revenues that your organization could otherwise be earning.

Sometimes it may be impractical to make bank deposits every business day. In this case, consider implementing a policy of never having more than a certain amount of funds awaiting deposit in your office at any given time. Funds awaiting deposit should always be kept under lock and key. Use of a bank lock box allowing payments to be mailed directly to the bank can also be helpful in minimizing the amount of cash stored on your premises.

Use of a Bank Lock Box

You indicated that your organization does not use a bank lock box. A lock box is like a cross between a post office box and direct deposit. When you rent lock box services from your bank, the bank provides you with a unique box number to which your organization can have payments sent. Once the payment arrives, the bank deposits the funds in your account and sends the documentation (invoices, correspondence, etc.) along to you. A lock box offers the following advantages:

- Funds are deposited to your account immediately without delay and begin earning interest.
- Reduces the risk of theft or mishandling of funds.
- Saves staff time in processing checks onsite and preparing and making deposits

The fees banks charge for lock box service can vary widely. Contact two or three institutions before making your choice.

Segregation of Duties

You indicated that your nonprofit may not have the level of segregation of duties in your cash receipts or disbursement function to reduce the risk that a single person will be in position to manipulate a transaction. Consider whether it is possible to divide the tasks related to processing cash so that no single person is required to perform any combination of the following:

- receive cash,
- deposit cash,
- record cash receipts,
- authorize cash disbursements,
- disburse cash,
- record cash disbursements,
- reconcile cash accounts.

From an internal control point of view, these functions are incompatible because a person who performs two or more of these functions may have the ability to both commit and conceal an act of fraud, embezzlement, or misuse of assets. For smaller nonprofits, true segregation of these duties may be a practical impossibility. In such cases, you can compensate for the lack of complete segregation of duties by ensuring timely and consistent review of completed tasks by someone outside the finance function.

Another helpful control is to have someone outside the staff finance team, such as a senior manager or the board treasurer, review bank statements for irregularities.

Contracts

Introduction

This section of your report contains recommendations on the subject of contracts. Effective contracts help the contracting parties begin an endeavor with a shared vision of desired outcomes and deliverables, options to limit risk and exposure if either party decides to withdraw from the relationship, tools to minimize or prevent surprises with respect to staffing and cost, and a roadmap for winding up or winding down the relationships if warranted by the circumstances of either organization.

Typical Contract Problems

Some of the typical challenges nonprofits encounter with contracting include:

- failing to limit contracting authority to designated persons
- not specifying expectations
- signing contracts that lack sufficient clarity
- not considering the possibility of termination, breach, or the possibility of circumstances that make it impossible to continue
- not realizing they have entered into a contract in the first place
- failing to assign responsibility for harm and the costs of harm
- failing to protect the nonprofit's assets, such as copyrights
- unexpected costs or disagreement about each party's responsibility for project expenses

As you review the recommendations in this report, remember that obtaining the assistance and advice of a lawyer licensed in your state is absolutely essential to protecting your agency's assets and good name. Your mission is too important to risk losing it all in a lawsuit or over unfavorable (and avoidable) terms in a contract.

Independent Contractor Agreements

You indicated that your agency uses written agreements with independent contractors. This is an important risk management practice that can dramatically reduce the risk of a misunderstanding concerning the nature of the appointment and each party's expectations.

As you may know, an effective independent contractor agreement does not have to be lengthy (a page or two can often suffice). You should review your current contract form to make certain that, at a minimum, it contains the following information:

- Name, type of entity (e.g., corporation, limited liability company, partnership, other?), street address, telephone number, and individual contact person of the independent contractor.
- A description of the services being provided and a timetable with measurable mileposts for when specific aspects of the service/work must be completed.
- Compensation (on monthly/work completed basis) based on invoices with dates, hours, and services performed, reports on milepost completion of work, and any out-of-pocket expenses that are necessary for the performance of the services (such as travel, lodging, and meals), but only if approved in advance and supported by appropriate documentation.
- The term of the agreement (beginning when, ending when).
- Provisions for terminating the agreement:
 - How much prior notice is required before termination?

- How much, if anything, must the parties pay upon termination?
- Statement clarifying that the contractor is an independent contractor solely responsible for determining the means and methods for performing the services and for its own payment of taxes, with no entitlement to workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise.
- Statement that the contractor shall at all times comply with all laws, rules, regulations, and ordinances applicable to the performance of the services described in the contract.
- Statement that information obtained from you and about your organization and its operations and clients is confidential.
- Statement that the contractor agrees that all creative ideas, developments and creations conceived in the performance of the contract are the property of the Organization and assigns all those rights to the organization.
- Statement that the contractor will not engage in discrimination.
- Statement that the contract is the entire agreement, which cannot be amended except in writing by both parties.
- The State of governing law and forum for any legal action.
- Statement that the work may not be re-assigned by the contractor (e.g., the contractor you choose has to do the work; he cannot have someone else do it).
- The signatures of both parties.

Obtaining Legal Review of Contracts Prior to Execution

By using legal counsel to draft or review contracts, you are engaging in the best possible practice to limit your organization's contracting liability. In fact, using counsel immediately limits your organization's contracting exposure in three ways. First, you are virtually assured that every significant contract your organization has will be in writing. (Your lawyer already has - or will - insist upon that!). Second, you can expect that the contract will address all the general contract elements in a way that maximizes your organization's interests and protection. (That's good legal practice in contracting.) And third, as much as possible, your organization's specific needs and demands with each particular contract (e.g., your fundraising, hotel, and independent contractor agreements) will be reflected in when, where, and how the work, services, or goods will be provided to your organization.

Client and Participant Safety

Introduction

Every nonprofit offering services to children, dependent adults, individuals with disabilities and the elderly should take reasonable steps to protect its clients from foreseeable harm. The risk management tools available to a nonprofit must be evaluated and considered in light of practical, financial, and other considerations. This section of your report contains feedback and recommendations based on your answers to the questions in the Client and Participant Safety module.

Explicit Prohibitions Against Sexual Conduct

You indicated that your organization's guidelines make it clear that any behavior that is sexual in nature -- or that could be interpreted as sexual in nature -- is not permitted. While many organizations assume that such common sense guidance would not be needed, some have discovered that failure to be explicit concerning sexual behaviors has resulted in service recipients being victimized and some organizations subjected to lawsuits. This has been especially true in some programs for adolescents in which staff members may be close in age to the residents of the facility.

Hugging and Other Non-Sexual Contact

You indicated that your organization's guidelines do not specify that, when a hug is appropriate, it should be given from the side, over the shoulders - and not from the front. Hugging and other forms of non-sexual contact are important to the nurturing of most individuals. When hugging is a full frontal embrace, there is a possibility that it will be misinterpreted in a sexualized context. Staff should be admonished to respect the boundaries that are set by clientele and if any resistance to physical contact is sensed, they should refrain from such contact.

Prohibition on Fraternization

You indicated that your organization doesn't prohibit fraternization (formation of social relationships) between staff members and service recipients. Fraternization between staff members and service recipients is a primary category of boundary violation. It confuses the distinctions between staff roles and peer relationships.

Staff Responses to Inappropriate Client Behavior

Staff members must know that it is their responsibility to set the boundaries when service recipients attempt to engage staff or other participants in inappropriate activities. An appropriate policy instructs the staff member to confront the service recipient at the first sign of inappropriate behavior, identify the offensive behavior, explain that it is inappropriate, and request the service recipient to stop the behavior and not repeat it. Staff members should be directed to report all incidents to their supervisors. It is possible that service recipients may be attempting the same kind of boundary violations with other staff members and reporting it ensures that a consistent response is given. Repeat episodes should result in increased sanctions, including suspending the service recipient from the program.

Ensuring Adequate Staffing

Adequate staffing of all your organization's services is critical to the effective control of risks of

personal injury and harm. Having a minimum of two adults (such as two staff members or a staff member and a parent) accompany all trips and outings helps to ensure that the opportunity for sexual abuse is minimized. Organizations in which one-to-one relationships are important should examine other risk reduction options.

You indicated that your organization does not have a policy that establishes a set ratio of staff/volunteers or parents to number of service recipients, depending on the nature of the activity and the requirements of participants for assistance. *Adequate staffing is a key component of conducting safe activities.* Unless your program is a mentoring program, a minimum of two staff members should be included in all trips and overnight outings. This chaperone requirement may be achieved by including volunteers and parents or adult family members of service recipients and should be supplemented by additional chaperones when members of the group will be involved in activities that require assistance or when the group is likely to become divided. Adequate supervision of an activity also provides protection for the staff and volunteers from false allegations of inappropriate conduct.

Limiting One-to-One Contact

You answered that your organization's policies do not limit one-to-one contact between staff members and service recipients. *Many organizations have established strict guidelines for their staff members that, in some cases, prohibit contacts that result in isolation of a staff member with a service recipient.* When such a contact occurs despite the rule, the staff member is required to report it to his or her supervisor. This rule limits the opportunity for sexual molestation of the service recipient and also helps to protect the staff member from false allegations of molestation.

Your organization should also examine the opportunity for one-to-one contact with service recipients in the context of transportation offered by the organization to vulnerable service recipients. When possible, the organization should minimize opportunities for one-to-one contact between vulnerable service recipients and individuals transporting them to and from organization sponsored activities.

When it is not possible to eliminate one-to-one contact when transporting clients, the organization should consider setting up a tracking system similar to that used by police departments when a male officer transports a female prisoner by himself. Generally this involves contacting the dispatcher when the prisoner is picked up and then contacting the dispatcher when the prisoner is dropped-off. The duration of the trip should be only long enough to transport from point A to point B. If an accusation of inappropriate behavior is lodged against the transporting officer, the time log may offer evidence that belies the accusation.

Protecting Client Privacy

You indicated that your organization has a written privacy policy that protects service recipients. Having a policy concerning client privacy is an important first step. It is also important to make sure that all staff members - employees and volunteers - understand the policy and are aware of their responsibility to use information about service recipients only as required by the organization for the delivery of its services.

Preventing the Release of Sensitive Information

Service recipients expect that organizations offering them services will not release information about their association with the organization unless the organization received permission from them. By having a policy that provides a reasonable safeguard against the release of sensitive information, you are upholding an important trust.

Nonviolent Conflict Resolution Options

Resorting to violence may be due to frustration -- the feeling that no other options are available. By offering opportunities for nonviolent conflict resolution and stressing the importance of using them, your organization has taken an important step to lessen the level of frustrations that individuals may otherwise experience and thereby avoid violence.

Review of Disciplinary Actions

You answered that you have a review process for disciplinary actions to ensure fair treatment of service recipients. *An administrative review process before disciplinary action is taken can prevent unfair and angry reactions by service recipients against staff.* Your current practice reduces the risk that service recipients will respond inappropriately to discipline.

Activity Selection Policies

You indicated that your organization has policies that guide the selection of activities offered by your organization. You have taken an important step in managing the risks which result from the kinds of activities you sponsor.

Ensuring That Programs and Services Support the Mission of an Organization

An organization should only place the safety of their service recipients at risk to the degree necessary to accomplish its mission. You indicated that the programs and services offered by your organization are evaluated in terms of their relationship to the mission of your organization. This is an excellent practice that reduces the likelihood that service recipients will be needlessly exposed to risk.

Offering Appropriate Activities

You indicated that the activities and programs offered by your organization are assessed for their appropriateness for the ages and abilities of the intended participants or service recipients. This is an excellent practice. Keep in mind that appropriateness may be measured in the context of the mental, physical, and emotional requirements for the program.

Obtaining Medical Histories

Many organizations that offer services to vulnerable clientele require either the service recipients or one of their family members to complete a medical history form. Information typically collected includes information about chronic conditions such as respiratory or cardiac problems, allergies, contagious diseases, immunizations and other relevant medical facts. Most organizations also obtain the name of the individual's physician or primary care provider and his or her telephone number.

Requiring Medical Clearances

When service recipients' medical histories indicate that participating in your organization's programs might inflict harm on the service recipient, it is prudent to seek professional guidance before placing individuals in potentially life-threatening circumstances. Some individuals may be denied the opportunity to participate based upon their medical histories. Other individuals may need to have their activities restricted. Further, and above all else, the staff members in charge of the activities need to be informed of the risks and the appropriate responses if any of the risks become realities.

Access to Medical Information

Your staff may require access to information on client medical issues in order to assist them in an emergency. Failure to prepare staff members to respond to something as simple as a bee sting may result in an untimely death of a participant who has an allergic reaction after being stung by a bee. Staff members need to know of any medical conditions that could affect an individual's participation in a program or activity. Such conditions include any restrictions on the individual's activities, symptoms that would indicate over-medication, allergic reactions, over-exertion, and the need for medication. We recommend that you revisit your policy and practices with regard to ensuring that program staff have access to the information they need to assist clientele.

Ensuring the Confidentiality of Medical Information

A policy intended to ensure the confidential handling of medical information obtained from service recipients is an excellent risk management strategy that protects your nonprofit as well as your clients. This policy should be continued and adherence to the policy monitored carefully.

Instructing Trip Leaders

You indicated that you require or provide instruction for leaders of trips and outings concerning the appropriate steps in emergency situations such as medical emergencies, automobile collisions, fatalities, or injuries. Often tragedies can be averted when prompt action is taken. When leaders of an organization's activities know how to respond in the face of an emergency, precious moments can be saved in obtaining the required assistance. While every organization should take reasonable steps to prevent injuries and other kinds of emergencies, every nonprofit and its staff members should be prepared to respond when necessary.

Obtaining Emergency Medical Care

Proper control of risks includes taking steps to minimize harm when other risk control strategies fail. Planning for activities should include the possibility that one or more participants may be injured. Individuals in charge of activities need to know how to respond when a service recipient is injured. Responses should include immediate first aid followed by appropriate medical care and treatment. When planning major outings or activities, consider contacting nearby emergency care facilities and informing them about the upcoming activity and prearranging emergency care.

Prompt Reporting of Injuries

You indicated that your emergency procedures require staff to promptly report incidents that result in injuries to participants. This is an excellent practice. Reporting incidents involving injuries to participants enables the organization to mobilize its resources to assist the injured parties and their families. It also enables the organization to be prepared for any media attention that the incident generates.

Communicating During an Emergency

In many respects the availability of cellular communications has facilitated ready access to emergency services when a crisis looms. Cell phones are not a total answer, however, as cellular service may not be available in some areas in which your organization conducts its programs. Even when cellular service is available, batteries go dead and equipment may malfunction. In widespread emergencies, circuits may become overloaded. For these reasons, additional options should be considered.

Guidelines for Media Relations

You indicated that your organization has written guidelines governing contact between staff members and media representatives. A media relations policy is an excellent risk management tool that can preserve public support of nonprofit programs while ensuring appropriate and timely responses to inquiries.

Central Check-in Point

You indicated that you do not require visitors to report to a central point to check-in. *When possible, organizations should establish a central check-in point for visitors.* A sign-in procedure for visitors enables the organization to identify individuals who visit your location and determine if they have a legitimate reason for visiting by asking them whom they are visiting and the purpose of their visit.

The use of visitor tags enables staff members to extend courtesies and assistance to visitors as well as to monitor their activities. If visitors require escorts and do not have them, a staff member can offer to show them where they are going. If someone is wandering around a facility used by the organization for delivering services, the staff can send them to check-in properly. The safety of vulnerable clients may require establishing reasonable controls on the access of visitors to service recipients.

Physical Barriers

You indicated that your organization does not use physical barriers in order to control access to its facilities. *Physical barriers include locked doors, gates, fences and other substantial architectural design features that control the entrance and egress of individuals into and out of your organization's program areas.* An organization should consider both external access as well as internal. For example, the outside door of a facility may be kept locked and opened only for authorized visitors. Please note: do not create safety hazards by inappropriately locking fire/emergency exits in such a manner as to prevent evacuation in emergency situations. Also, never install or leave bars on windows unless the appropriate panic hardware is also installed.

Designating "Off-Limits" Space to Protect Participant Safety

Since the goal of controlling access is the safety of participants, *organizations that cannot physically block access to unused areas should consider increasing the level of supervision so that all participants are accounted for* and not allowed to have access to areas in which isolation and victimization might occur. This process begins by informing service recipients of the areas that are "off-limits."

Inspecting Facilities and Equipment

You responded that your organization *does not* require periodic inspections of facilities and equipment used in conjunction with the services you offer. Inspecting program areas is an important risk management tool for identifying hazardous conditions before they injure a program participant. Individuals conducting inspections should consider the perspective of the service recipient. For example, if an area is used for child care of toddlers, the inspector should make the inspection at the same eye level as the children for whom care is being given. If the area is used for programs serving individuals who use wheelchairs, the inspector might perform part of the inspection while seated in a wheelchair. Areas used for some of your organization's services may not have such unique requirements, but remember, even a loose bit of carpet or slippery stair tread can result in a serious injury.

A checklist is an important risk management tool that ensures that common risky conditions are not overlooked. The person conducting the inspection should sign and date the checklist before it is filed. Remedial actions should also be initiated before the checklist is filed. Once it is in the file cabinet, it is all too easy to forget that deficiencies need to be corrected before an injury occurs. Before conducting the next inspection, a review of the last inspection can serve to remind inspectors of conditions that should have been remedied.

The same form on which deficiencies or hazardous conditions are listed can also become a log for recording the corrections as they are made. Some conditions are such that they can be corrected during the inspection. Others may require that a work order be completed or a contractor or plumber be retained to correct the condition. When the repairs or corrections are made, the person overseeing them should date and sign the log showing that they have been completed. Some organizations have established deadlines for initiating corrective action once a deficiency has been noted. If the condition is sufficiently hazardous, the area should not be used until the hazardous condition has been corrected.

Safety inspection of equipment used by your organization can reduce risk by identifying hazards before injury occurs. Electrical equipment, mechanical equipment, and athletic/playground equipment used for or by service recipients should all be inspected on a regular basis. Manufacturers' suggestions for inspections should be followed. Some general considerations for equipment inspections include the following:

- *Electrical equipment* should be checked for frayed wires -- especially at points of wear by the plug and the entry into the equipment. The plug should be checked to see if it is intact and, if it is a three-prong plug, that the ground (middle prong) is still present and has not been cut off. Switches should be checked to see that they operate smoothly and when in the "off" position stop the operation of the equipment.
- *Mechanical equipment* should be checked for ease of operation -- does it operate the way that it was designed to operate? All of the safety devices should be operational -- for example, if the organization installed an automatic door opener, does it stay open long enough for a person using a wheelchair to clear the door?
- *Athletic/Playground equipment* should be inspected for wear and tear as well as for safety. Worn athletic gear can cause injuries to the individuals using it and should be replaced. An issue for some athletic and playground equipment is proper installation. If equipment is improperly installed, it may collapse or malfunction, thereby causing injuries. A good source of information concerning safety for playgrounds is the Consumer Product Safety Commission on the Internet at www.cpsc.gov.

Fire extinguishers, first aid kits, and smoke detectors are often required by Federal, state, or local laws and should be checked regularly to ensure that they are operational and not out-of-date. Regular inspections can verify compliance with the law and avoid penalties as well as help maintain a safe environment for serving your organization's clientele.

Making Your Expectations Clear

You indicated that your organization makes it clear during the screening and selection process what you expect with regard to the behavior of staff towards vulnerable service recipients. This is an important practice that reduces the risk that staff will subsequently act inappropriately.

Managers and board members of some organizations feel that an explicit statement prohibiting sexual acts with service recipients is unnecessary because no one in their right mind would consider such relationships to be proper. Unfortunately, the prevalence of inappropriate sexual conduct involving staff members and vulnerable service recipients gives rise to the need to clearly state what should be obvious.

By making these statements during the screening process, you are putting individuals who are seeking a position with your organization in order to gain access to sexual opportunities on notice that the organization does not and will not tolerate such behaviors.

Position Descriptions for All Staff

You indicated that your organization uses written position descriptions for paid staff and unpaid volunteer positions. Position descriptions are a valuable risk management tool. Through the use of written position descriptions for all of your organization's employees and volunteers, you may establish the boundaries for the responsibilities that each position has and may even limit the activities of staff members to those that are within the scope of the position. This will help avoid staff members' involvement in activities for which they are not qualified or are outside the scope of your organization's services.

Use of a Rigorous Process for High Risk Positions

When screening applicants for positions, the screening process should be based, in part, upon the risks inherent in the position. The greater the risk, the more extensive the screening process should be. In addition to the basic application process that includes a written application, interviews and reference checks, organizations have several options for more extensive screening. These options include record checks and additional reference checks.

The most common types of criminal history record checks are state-based checks and federal (FBI) record checks. Generally, checking both state and federal criminal history databases involves two separate processes. A criminal history record check is part of a screening process -- not a selection criterion. Before incorporating criminal history record checks into their screening processes, organizations should establish screening criteria: clear guidelines stating which offenses are relevant; what offenses will disqualify an applicant; what, if any, other factors will be considered; and how the rights of the applicant will be preserved.

When establishing screening criteria, organizations must take into account state and local laws and regulations. Some jurisdictions have instituted screening or licensing requirements for individuals who have substantial contact with children or other vulnerable individuals (dependent elderly or individuals with disabilities). Make certain you determine if licensing or regulatory agencies have identified specific offenses that would disqualify applicants for some assignments.

For positions that require substantial direct contact with children or other vulnerable populations, personal safety concerns are paramount. Therefore, the focal points of criminal history record checks for these individuals are crimes against persons.

Youth-serving organizations generally agree that individuals should be permanently disqualified from holding positions that require substantial contact with children if their criminal records include any of the following:

- Past history of sexual abuse of children.
- Conviction for any crime in which children were involved.
- History of any violence or sexually exploitive behavior.

Sex offender registries offer an inexpensive alternative for obtaining criminal history record information when other criminal history records are unavailable. Many states have put their sex offender registries on-line so that anyone with access to the Internet can check them. An advantage to sex offender registries is the requirement that sex offenders register when they move from state to state so that a

conviction from another state could be recorded on the registry for the state in which the sex offender currently resides.

If your organization offers (or arranges) transportation services to vulnerable clientele, it may incur significant liability exposures in addition to the potential for injury to vulnerable service recipients. Ensuring that your drivers do not have a record of unsafe driving is fairly easy as most states offer access to drivers' records for organizations having a need for the information. The cost ranges from \$2.00 to \$10.00 for each driving record. Some insurance companies will perform the checks as a service to their insureds. Some insurance companies require DMV checks of each driver the organization seeks to insure as a prerequisite for insurance coverage.

Unfortunately, some people try to pass themselves off as someone they are not. For this reason, it pays to verify credentials that are required for particular positions. For example, if a position requires an individual to have a license for counseling, the organization should contact the appropriate licensing authority and verify that the individual holds a current license. If an individual needs to have a graduate degree, the organization should contact the educational institution from which he or she indicated a graduate degree was awarded. Always inform applicants for both employment and volunteer opportunities that information they provide on the application will be verified and misrepresentations or omissions may be cause for immediate rejection as an applicant or termination from employment if hired.

Orienting New Staff

You indicated that your organization provides an orientation session for new staff members. This practice is an important tool for reducing the risk that staff members will behave inappropriately toward clients, or otherwise violate the organization's rules and procedures. An effective orientation provides a clear explanation of the organization's mission, policies, procedures and expectations, and affords an opportunity for participants to pose questions about specific circumstances.

Providing Information on Special Client Needs

If your organization offers services to service recipients who have mental retardation, physical disabilities, or are elderly and require assistance, new staff members need information concerning proper assistance techniques. For example, when assisting service recipients into and out of wheelchairs, they need to know how to set the brakes on the wheelchairs, how to place the footrests, where to hold the service recipient, and how to lift without injuring the service recipient or staff member.

Mandatory Reporting

You responded that you provide information about reporting procedures for suspected abuse of a service recipient during your orientation for new staff. *Vulnerable service recipients, both child and adult, may be targets for abuse.* Staff members need to know what abuse is, red flags of possible abuse, what actions to take when abuse of a service recipient is suspected, and what the staff member's legal responsibilities are.

Most states have laws requiring caregivers of vulnerable individuals to report suspected abuse to either a protective services agency in state or county government or to a law enforcement agency. Failure to report suspected abuse could result in both criminal and civil penalties.

See the following [website](#) for an overview of mandated reporter obligations in New York and basic information about the New York State Child Protective Services (CPS) system.

In-service Training

You indicated that your nonprofit provides in-service training for staff who work with vulnerable populations. This is an excellent practice. Congratulations on your efforts to train staff members in order to maintain the quality of your programs and the safety of your service recipients.

Transportation

Introduction

This segment of your report contains feedback and recommendations on the subject of transportation risks. Vehicular accidents are one of the leading causes of injury to nonprofit staff and volunteers and they are a common source of claims filed against nonprofit organizations. A surprisingly high percentage of these claims involve a single vehicle, such as property damage caused by backing into a post in a parking garage. Single vehicle accidents are most likely to occur when a driver is unfamiliar with a vehicle.

The risk of a transportation claim exists whenever a car, truck, bus, or other vehicle is used on behalf of a nonprofit. Many accidents can be avoided through the adoption of policies and procedures concerning drivers, vehicles, and passengers. In some cases, risk can be transferred to or shared with a contract transportation provider. A transportation risk financing strategy that includes automobile coverage is a must for every nonprofit.

Understanding Your Transportation Exposure

You indicated that your organization provides or sponsors transportation services or owns (or leases) one or more vehicles. Transportation is the means for an organization to carry clients, volunteers, employees, goods, or equipment from one place to another. For many nonprofits, transportation services are an integral part of fulfilling the organization's charitable mission. For example, a nonprofit that delivers hot meals to shut-ins cannot operate without volunteers or employees driving either their own or agency vehicles. Many nonprofits that do not provide transportation services overlook their incidental transportation exposures. It is nearly impossible for a nonprofit to operate today and not have some form of transportation exposure. The risks may arise from "incidental driving" such as an employee or volunteer driving his or her own vehicle to attend meetings, or an agency function, or to run an errand to the bank, post office, or office supply store.

While every nonprofit has the possibility of a loss from an automobile claim, the level of risk increases when an organization's core business includes transporting people, materials, or equipment, or when an organization owns or leases vehicles. Therefore, your agency must be diligent in managing the risks associated with your transportation activities as well as the risks from incidental driving.

It is always prudent to consider whether your nonprofit's transportation activities are essential to achieving your core mission, or whether you can transfer or share the risk of loss by engaging a contract provider of transportation services.

Transportation Risk Management Statement

You responded that your organization does not have a written transportation risk management statement. Although you do not have a written statement, organizational culture and common practices may imply your transportation risk management philosophy. However, it is always better for an organization to create written guidelines, rather than assume personnel understand your goals and priorities. Consider adopting a formal "safety first" philosophy for all of your organization's activities and services, not just for your transportation exposures.

The statement can also incorporate your basic driver safety rules. The rules may delineate desired behavior, such as always wear seatbelts, lock car doors, and do not play loud music, or have other

distractions. Other guidelines are to not drive when overly tired or taking medication that impairs your abilities, do not use cell phones while driving and so on.

Vehicle Use Policy

You indicated that you have a policy concerning the use of your organization's vehicles. This is an important risk management tool.

We recommend that you review your policy and consider making sure that it clarifies:

- Who is authorized to drive the agency's vehicles;
- Who is authorized to drive their own vehicles on behalf of the organization;
- The approved uses for the vehicles (transporting clients, materials and equipment, etc.);
- If employees, volunteers, or clients can use the vehicles for personal errands. If yes, the process for requesting and granting permission for personal use of the organization's vehicles;
- If members of the employee's or volunteer's family can drive the organization's vehicles;
- Whether your organization prohibits any uses such as transporting hazardous materials, carrying passengers in an open truck bed, participating in car rallies, or other activities;
- What driving restrictions apply, such as limited night driving, limits on the number of hours someone may drive in one day, or the requirement that drivers take periodic rest breaks.

Passenger Behavior Policy

You indicated that you do not have a specific policy about passenger behavior. Most people have witnessed drivers coping with mild to severe passenger distractions. From heated arguments with "back seat drivers" to imposing discipline on children or other passengers within the vehicle, passenger distractions are accidents waiting to happen. Passenger safety and behavior guidelines are an important component of a comprehensive transportation program.

All passengers transported by your paid and volunteer staff should be required to use basic safety equipment such as seatbelts, child safety seats, and wheelchair tie-downs as needed. Passengers should also adhere to minimum safety procedures, such as not causing distractions to the driver of the vehicle, remaining seated, not playing loud music and no horseplay while in the vehicle. Drivers and other passengers should be required to report all violations of these rules to the appropriate personnel. The organization should consider disciplining passengers who repeatedly violate the organization's rules including the possibility of losing future transportation privileges. Passengers should also be encouraged to report any observed unsafe driving practices to the appropriate personnel.

Accident Reporting Procedures

You indicated that your organization does not have accident or incident response and reporting guidelines. These guidelines are important to every organization, even those that do not own any vehicles. Consider adopting these guidelines as soon as practicably possible. While no one expects to be involved in an automobile accident, one of the best things an organization can do to minimize the severity of post-accident losses is to teach drivers and passengers how to respond to and report accidents.

Consider adopting some of the following guidelines:

- Stress the importance of reporting accidents to the organization as soon as practicably possible (after medical assistance has been rendered to victims).
- Clearly delineate the person to whom accidents should be reported.

- Emphasize that the organization's primary concern - and that of its drivers - is the health and well-being of the driver, passengers, the occupants of any other vehicles involved in the accident, and, if applicable, involved pedestrians or bystanders. Instruct the driver to stop at once and give aid to anyone injured in the accident and check for injuries. Drivers should also be told not to move occupants who appear to be seriously injured.
- Emphasize the importance of getting out of harm's way and protecting everyone after the accident. Many secondary accidents occur when drivers involved in a collision fail to pull over and get out of traffic lanes. A growing number of states are adopting fender-bender laws that require motorists involved in accidents to move their vehicles into breakdown lanes.
- Explain the importance of placing warning devices 200 to 300 feet behind the vehicle. Flares or markers should be placed so that traffic has enough warning to react and slow down.
- Instruct drivers and passengers involved in an accident to notify the police or highway patrol immediately, and also, to request a copy of the police accident report.
- Instruct drivers to collect additional information at the accident scene such as the license plate numbers of all involved vehicles, and the names, addresses, and driver's license numbers of all persons involved in the accident, including any witnesses. Require that an Accident Reporting Form be kept in the glove box of a vehicle at all times. Train all personnel in the proper completion and distribution of the form.
- Inform drivers and passengers that they may furnish the name and address of the insurance company that provides your organization's automobile liability insurance coverage to anyone involved in the accident who requests the information. They must also give the name of the organization's local insurance agent. This information should be accessible to all drivers, and may be stored in the glove compartment with blank accident forms. Most states require that every vehicle contain proof of insurance.
- Explain the importance of preserving evidence after a collision. Many organizations keep a disposable camera in their vehicles to use in taking pictures at the accident scene.
- Clarify the importance of avoiding a discussion with persons at the scene about who is to blame for the accident. Drivers should be instructed not to apologize or admit responsibility or guilt for the accident, but express concern without admitting liability.

Potential Liability for Damages Caused by an Unpaid Driver

A nonprofit *can* be held liable for the negligent act of a volunteer whether the volunteer is driving an agency vehicle or his or her own auto on agency business. An organization can be held *directly* liable for actions that cause harm to another. The injured party might assert that the organization failed to screen and select its drivers properly. Another plaintiff might allege that a nonprofit failed to train or to supervise its drivers and other personnel.

A second form of liability is *vicarious* liability where the actions of an organization's agents are transferred to the nonprofit. Vicarious liability becomes important when a nonprofit has employees or volunteers driving their cars or other vehicles not owned by the nonprofit on agency business. Under the theory of vicarious liability, a nonprofit could be responsible for the actions of its drivers and other personnel if three conditions are met. First, the driver or agent must be acting on behalf of the organization and with its authority. Second, the organization must have the right to control the driver's actions. Finally, the incident must have occurred while the driver was acting within the scope of his or her duties.

Incidental Driving Exposure

You indicated that driving is not a principal responsibility for any of your volunteer or employee positions. Although driving is not a key job function, you should recognize that you may still have a

transportation exposure. It is practically impossible for a nonprofit organization to operate without some transportation exposures. The main source of risk is volunteers or employees driving their own vehicles on behalf of the organization. The staff may drive to off-site meetings, training sessions, or run errands to pick up office supplies. Volunteers may be driving to and from special events or running errands for the organization. In all of these cases and many more, the organization can be held liable for the actions of the people driving on behalf of the organization.

Screening Drivers

Remember the old adage, "Better safe than sorry." Screening and selecting drivers makes good sense. However, an effective screening and selection process needs to be quite thorough. You indicated that you do not screen those who drive on your behalf. Some organizations are casual about screening and selecting their drivers, but if there's an accident involving an "unqualified" driver, the organization's lax attitude toward screening may come back to haunt it.

The establishment of a driver selection process should be a part of your usual employee or volunteer screening program. As a rule of thumb, the greater the transportation exposure, the more extensive the driver screening process should be. First, you should review each employee and volunteer position description to determine if driving is a part of the position. The extent of the transportation exposure will vary by the position. You can view the exposures and appropriate selection process as a continuum. On one end of the continuum are the positions that do not involve any driving. At the other end of the continuum are the most hazardous positions that involve activities such as the use of buses and vans to transport people, handling special materials or equipment, transporting people with special needs such as wheelchair lift vans, or driving large, heavy vehicles. The middle section includes positions with less hazardous exposures such as transporting people in private passenger vehicles or more frequent driving as an essential function of the position but not requiring any special licenses or training.

A basic screening process might include an application, personal interview, reference checks, verification that the applicant has a valid driver's license, and proof of personal auto insurance. Additional items that might be considered in a more rigorous process include: a statement of driving history, statement of medical condition, motor vehicle record, and a driving test.

A description of some of the tools available for driver screening and selection is provided below:

- *Position Application* - Collecting basic personal information and questions regarding the person's driving status.
- *Personal Interviews* - Having someone from your organization interview the applicant to determine their acceptability for the position. Consider requiring the applicant to bring their motor vehicle record (MVR) to the interview.
- *Reference Checks* - Contacting non-family references to determine the person's suitability for the position.
- *Valid Driver's License* - Confirm that the applicant has a valid driver's license and note any restrictions or limitations placed on their ability to drive (i.e., no night driving, special equipment, corrective lenses, etc.).
- *Statement of Driving History* - For the occasional driver, it may be acceptable to ask the applicant to complete a statement of driving history instead of ordering a copy of his or her motor vehicle record.
- *Proof of Personal Insurance* - If the person will be driving his own vehicle, your organization may want to require proof of personal automobile insurance with stipulated limits.
- *Motor Vehicle Records (MVR) Check* - Visit the appropriate state website to learn about DMV records retrieval.
- *Special Licenses or Certifications* - Certain size and types of vehicles require special driver's

licenses such as the Commercial Driver's License. In some jurisdictions drivers who transport persons with developmental disabilities must obtain a special certificate. Determine if there are any special requirements applicable to the types of vehicles your organization operates or the types of passengers served.

- *Statement of Medical Conditions* - Some organizations require their drivers to submit a statement of their medical condition that includes any medications the person is taking.
- *Driving Test* - You may want to work with your local police department to have applicants take an "on-the-road" driving test.
- *Physical Examination* - Some driving positions may require that the person receive a physical medical examination prior to operating the vehicle.
- *Drug and Alcohol Testing* - An organization may decide to implement a drug and alcohol testing program for its drivers. Such a program is mandatory for any position that requires a Commercial Driver's License.

Additional screening tools are available, but this highlights the main methods used by nonprofit organizations.

Driver Training

You indicated that you do not provide driver training for paid and volunteer staff. We suggest that you consider training anyone who drives on your behalf. Training drivers is a good idea, especially if they are required to drive an agency-owned vehicle with which they might not be familiar. Make sure that all of your drivers know how to safely operate whatever vehicle they will drive. Insist that seat belts be worn at all times and that safety seats are available for small children.

You might even consider putting together a driver's handbook that states your policies and expectations clearly. The training program, like the selection process, should be developed based upon the nature and extent of the driving performed for each position. Not everyone needs to be trained to the same level unless they are performing the same tasks.

Having a new driver work with a more seasoned driver is an excellent method of training.

Here is an overview of training topics to consider including in a driver training program.

New Employee/Volunteer Orientation

- General overview of your transportation policies and procedures
- Transportation risk management statement including your organization's general driving rules
- Authorized drivers and vehicle use
- Mileage reimbursement policy
- Accident procedures

Position Specific Issues

- Any skill requirements or special training or licenses (first aid, CPR, special driver's license, etc.)
- Training on driving certain types of vehicles (i.e., panel trucks, large passenger vans, trucks, or buses). Custom design a training program for lift operation, wheelchair tie-downs, radio procedures, or any other special function that your drivers may be asked to perform.
- Defensive driving and other driver training programs
- Passenger assistance
- Vehicle inspection and maintenance procedures including documentation
- Use of trip logs

- Supervision - Chain of command
- Transportation safety program - incentive awards, safety meetings, safety committee, review of transportation issues/problems

Supervising Drivers

You indicated that you have someone responsible for overseeing your paid and volunteer drivers. Having a supervisor for driving activities is an important first step in managing transportation risks in your nonprofit. Make certain that this person has the authority to enforce the policies adopted by your organization. Also ensure that the supervisor is well versed on your transportation policies and procedures and can articulate them to all drivers in the program.

Monitoring Driver Performance

Monitoring driver performance on an ongoing basis is another effective risk management tool. The proper supervision of drivers requires continuous performance monitoring and evaluation. You answered that you do not currently evaluate your drivers' performance. The proper selection of drivers is only the first step; your organization then needs to supervise and monitor their performance. Here are some strategies to consider in developing your evaluation process. The strategies can vary based upon the nature of your driving exposures.

- *Periodically check Motor Vehicle Records* - Periodically secure and review current MVRs for your drivers. If you have a marginal driver, you may consider ordering a new MVR every six months or a longer time period for the occasional driver with a "clean record."
- *Require an on-the-road driving test* - Consider having a supervisor or other driver ride with each driver to re-evaluate their driving skills.
- *Confirm medical conditions* - Some positions may require annual physicals or an annual update on the driver's Statement of Medical Condition.
- *Administer written driver safety tests* - Periodically administer driver safety tests and record the results. This can be a part of your transportation safety incentive program.
- *Review accident and incident reports* - On a regular basis review the accident and incident reports to identify any trends or potential problem drivers.
- *Conduct regular performance reviews and conferences* - Every employee and volunteer should have some form of annual performance review. The depth of the review for volunteers will vary based upon their position. The review process also offers an excellent opportunity to recognize worthy volunteers and employees.
- *Review transportation program logs and reports* - A part of the performance review process should be a review of the various forms of documentation within the program. The transportation program may have a complaint log, vehicle inspections, maintenance requests and confirmations, trip logs, accident reports and other documents needed to manage your transportation exposures effectively.
- *Verify position requirements* - Verify that each driver still has the proper credentials including a current and valid driver's license, any required licenses or special certificates. If the driver is using his own vehicle, check his personal automobile insurance.

Commercial Driver's License Issues

You indicated that your organization does not own any 16-passenger vehicles or vehicles weighing over 26,000 pounds or you do not know whether any agency vehicles meet this criteria. Under Federal law, the drivers of these types of vehicles must have a Commercial Driver's License (CDL). The CDL program is a part of the Commercial Motor Vehicle Safety Act of 1986 that made it illegal for a driver

of a commercial motor vehicle to hold more than one license. The act also requires states to make their testing and licensing programs conform to the Federal minimum standards. Anyone driving a vehicle designed to transport 16 or more passengers, including the driver, or is placarded for hazardous materials must hold a CDL. In addition, anyone driving a vehicle or combination of vehicles with a gross vehicle weight in excess of 26,000 pounds must hold a Commercial Driver's License.

Aside from the vehicle requirements, the Commercial Motor Vehicle Safety Act imposes many responsibilities on both the driver and the employer. The U.S. Department of Transportation's CDL regulations require prospective employers to check, within thirty days of the date the driver's employment begins, the motor vehicle records for the applicant's driving history. The organization must also conduct an investigation of the driver's employment record for the past three years. Also, anyone holding a CDL must report to his or her employer within 30 days of a conviction for any traffic violation (regardless of the type of violation, except parking tickets, or the vehicle being driven at the time). Employers cannot use a driver holding more than one license or whose license is suspended, revoked or cancelled. Additionally, drivers and employers are subject to stringent requirements for drug and alcohol testing and physical examinations.

For additional information on CDL requirements, contact the U.S. Department of Transportation (www.dot.gov) or your state Department of Motor Vehicles.

Owned or Leased Vehicles

You indicated that your organization owns or leases one or more vehicles. Your organization either provides transportation for your clients or has enough employee or volunteer travel to have its own vehicles.

No matter what type of vehicles you own - private passenger cars, buses, trucks or vans or some combination - your organization is responsible not only for who drives the vehicles but their maintenance and upkeep. Every nonprofit that owns vehicles should have policies and procedures in place to manage the risks of owning and operating motor vehicles.

Vehicle Selection Policy

You indicated that you have a vehicle selection and replacement policy. The following are some factors to consider in evaluating the adequacy of your policy:

- Do you have specific criteria for selecting the type of vehicle(s) your organization needs to fulfill its mission - private passenger cars, minivans, vans, different types of trucks, or buses? If you require buses, what passenger size is needed?
- Does the criteria include the type of safety equipment that must be installed such as airbags, side impact features, anti-lock brakes, four-wheel or all-wheel drive, head restraints, large side mirrors, backup alarms and mirrors, cargo holders and any special mechanical equipment such as lifts?
- How often will you replace your vehicles?
- Is replacement dependent upon the vehicles' age, mileage or obsolescence?

Trip Logs

You indicated that you do not maintain trip logs for your organization's vehicles. Trip logs record who drove the vehicle, for what purpose, with or without passengers, and the mileage. The purpose of a trip log is to assist you in evaluating the usage of your vehicles. You can use these logs to analyze the nature and extent of usage to determine if you need the vehicle, if you have the right vehicles, and who is

driving the various vehicles. From the evaluation you may decide to modify your transportation program and goals.

Inspections

You indicated that your organization does not require or document pre- and/or post-trip inspections of your vehicles. Mechanical failures and poor maintenance may cause or contribute to an auto accident. Remember that you have a responsibility to maintain safe motor vehicles for your organization. We urge you to consider conducting pre- and post-trip vehicle inspections.

First, assign the responsibility for vehicle maintenance to one person (with a back-up), even if the vehicles are assigned to specific personnel. The assigned transportation staff person can work with others in the organization to ensure that your vehicles are properly maintained as well as be responsible for any fleet or pool vehicles owned by your organization.

For fleet or pool vehicles, the driver should, before each trip, perform a visual inspection of the vehicle. Create and use an inspection form that the driver should submit at the end of every trip. The checklist form will enable the driver to check the various components and safety equipment of the vehicle. After the trip, the driver should re-inspect the vehicle and note any problems that developed during the trip. On a periodic basis, the transportation manager should also inspect the vehicles and take any action needed.

It is important to retain records of these various inspections and maintenance. Improper or inadequate maintenance can be a factor in an auto accident. Written records are important to confirm that people are performing appropriately and demonstrate that your organization maintains its vehicles in a safe operating condition.

Documenting Vehicle Maintenance

Ensuring proper maintenance and repairs is one of the primary reasons for pre- and post-trip inspections. However, if a driver does not know how to inspect or how to report problems, inspection procedures are meaningless. You indicated that your organization has not established procedures for routine and special maintenance of your vehicles. Consequently, vehicle maintenance may be intermittent and result in the operation of an unsafe vehicle.

Your organization should have one person (with a back-up person) responsible for overseeing the maintenance and repair of your vehicles. The designated individual should receive the pre- and post-trip inspection reports to determine if a vehicle needs any maintenance work. This person should also review the trip logs to ensure that the routine maintenance is performed by a qualified mechanic when needed (based on mileage or time periods). For vehicles assigned to specific personnel, the transportation person should work with these people to make sure that the routine maintenance is done. Make sure that your organization keeps all maintenance and repair records. The records are useful in the event of litigation to show that the vehicles are in a safe operating condition. You can also use the records to evaluate the cost effectiveness of your transportation activities and determine whether these activities are helping your organization fulfill its mission.

Train all drivers to report any vehicle problems to the assigned transportation person immediately. An unsafe vehicle is an accident waiting to happen. Your organization does not want to cause any harm or have to spend undue time and resources responding to an accident and having the vehicle repaired or replaced.

Understanding the Exposures for Rented, Hired and Borrowed Vehicles

You answered that neither your employees nor volunteers rent, hire or borrow vehicles from others. Have you considered all of the possible circumstances in which someone from your organization may rent, hire or borrow a vehicle? They may rent a car while on a business trip, rent a van to transport staff or clients to an event, or rent or borrow a vehicle from another organization, such as a school, church, local business, or other nonprofit to move equipment or materials. Even if none of this occurs now, is it possible in the future that your organization will rent, hire or borrow vehicles?

Another issue is whether or not your organization loans its vehicles to other groups. Many organizations are surprised to learn that when they loan a vehicle their insurance is the first and often only source of recovery for both liability and damage to the vehicle in the event of an "at-fault" accident. Your insurance policy will pay for both a liability loss as well as the physical damage to your vehicle. Therefore, it is important to evaluate when, if at all, your organization will loan its vehicles to another organization.

Contract for Transportation Services

You indicated that your organization does not contract with transportation service providers such as limousine services, bus or shuttle services, or trucking firms that haul your equipment or materials.

Verifying Personal Auto Coverage

You indicated that you require proof of personal auto insurance from all personnel driving their own vehicles for your organization's benefit. This is an excellent risk management strategy. Some insurance companies require this practice when you have personnel driving their own vehicles on agency business. In the event of an at-fault auto accident, the vehicle owner's insurance policy is the first line of coverage for a liability loss. If the owner does not have auto insurance, the responsibility for the financial consequences of the accident could be shifted to your organization. We encourage you to remind your employees and volunteers that their personal auto insurance will respond to any loss first. You should also tell them that your organization does not have any insurance policy that will reimburse them for any physical damage to their car.

Cargo Insurance

You indicated that you transport cargo either in your own vehicles or through transportation companies. If you also have cargo insurance for these goods - well done! Few nonprofits recognize their potential exposure to loss from transporting goods and materials. Many organizations assume that a transportation company will assume responsibility. However, a company's liability for your cargo is usually very limited. Also, some larger nonprofits have their own trucks and tractor-trailers that they use to haul materials. No auto policy covers the cargo carried by, within or on the vehicle. For this exposure, you need an inland marine policy.

Technology and Privacy Risk Management

Introduction

This section of your report contains feedback and recommendations about managing technology risks based on your answers to the questions in the Technology and Privacy Risk Management module. The suggestions in this report follow the subtopic headings for the module: Technology Policies, Cybersecurity Assessment, Technology Vendors, Sensitive Information, and Cyber Liability Insurance.

Comprehensive Policy

You indicated that your technology policy is comprehensive, and that it addresses all or virtually all of the possible categories of misuse you have experienced in the past or anticipate in the future. The use of technology policies in the nonprofit sector is still an emerging practice. So your use of a policy that you believe is comprehensive is both unusual and commendable from a risk management perspective. As with any risk management tool or employment policy, you have to walk a fine line between presenting a comprehensive policy and formulating policies that are so lengthy or complex that they beg for an "executive summary." You don't want employees to violate your policies because they were hard to understand or took too long to digest. Here are a few questions you might want to ask with respect to your comprehensive technology policy:

- What are the most critical prohibitions or rules outlined in the policy?
- Does the policy place the proper emphasis on the most critical issues?
- Is the policy sufficiently or overly strict?
- How have employees reacted to the policy? Does it enjoy widespread support? Do employees understand the rationale behind the policy?
- Is the policy stated in clear terms that every employee can understand? If not, can technical terms or concepts be rewritten to increase understanding?
- Have any employees been reluctant to agree to the terms of the policy? If so, why? Are changes warranted to ensure greater acceptance of the policy?
- Is there anything about the way in which the policy is disseminated that dissuades employees from reviewing it on a timely basis? (Some nonprofits find that it works more effectively to separate the technology policy from the employee handbook, in order to emphasize its importance.)

BYOD Policy

You indicated that your agency does not have a "Bring Your Own Device" Policy. Many staff simply don't realize the security risks associated with smartphones. We recommend that you adopt a BYOD policy that clarifies what agency information may and must never be accessed on personal devices. For example, the policy may allow employees to retrieve and send email messages from their phones, but strictly prohibit signing on to payroll, human resources or donor databases from a personal device.

As you develop your policy, remember to:

- specify what devices are covered
- make it clear who owns what
- ensure that a plan is in place to disable email and other resources accessible on a personal device at employee separation
- communicate the BYOD policy to employees, including instructions on what type of data may be accessed on personal devices, procedures for accessing data securely (e.g., through a secure

network), and procedures for storing and transmitting data securely (e.g., using encryption).

You might also decide to offer resources to employees such as AT&T Toggle, a BYOD solution that allows employees to switch from 'work mode' to 'personal mode' on a smartphone. Whatever your BYOD policy is, aim to strike a balance between protecting organizational data and upholding the privacy rights of your employees.

For additional information on BYOD policies, see:

- [Personal Devices at Work](#) - NRMC
- [BYOD Policies: What Employers Need to Know](#) - SHRM
- [7 Tips for Establishing a Successful BYOD Policy](#) - CIO

Telework Agreements

You responded that your telecommuting employees are required to sign a "Telework Agreement" outlining the restrictions and requirements associated with your telecommuting program. A Telework Agreement can be an effective risk management tool, enabling a nonprofit to reduce the likelihood of surprise in the supervision of telecommuting employees. You might want to review your current Telework Agreement to make certain that it includes the following critical elements:

- An overview of the parameters of the program, and any special requirements that apply (e.g. that telework locations be within the state where the nonprofit operates, or that the nonprofit will be allowed to inspect the work site).
- Information on the nonprofit's systems security provisions and instructions.
- A restatement of the nonprofit's applicable code of conduct.
- Information about the required work schedule and means of communications between the employee and the "home office" as well as contact between the employee and the nonprofit's clients and outside vendors.
- A signed statement that the employee agrees to establish and maintain a safe and secure home workstation and that the employee has read and understands the policy and agreed to abide by its provisions.

Passwords Policy

It is common practice to require a level of security with password usage for various account logins (email, system, databases, etc.). You should develop your policy so that it addresses the following:

- *Strength of password*: This addresses the length of the password and the types of characters that must be utilized. There may also be guidelines that cover how often previous passwords can be reused and how unique a password must be from previous passwords.
- *Frequency of change*: Passwords should be changed on a regular basis but there is no uniform guideline on this topic. Some experts suggest that passwords for sensitive sites be changed at least 2-3 times per year. In a 2009 publication from the National Institute of Standards and Technology (NIST), the authors encourage organizations to balance security and usability needs when mandating password changes. NIST also emphasizes that password strength has greater benefit than mandatory expirations. For an article exploring password change policies, see: [Time to rethink mandatory password changes](#), by Lorrie Cranor.

By addressing these criteria and outlining them in your written policies, the password security is improved. You should also remind users to utilize different passwords for various accounts and logins so that if one password is cracked, access to other systems and logins won't be compromised as easily.

Finally, in the event of a security breach, users should be encouraged to change their passwords immediately.

Staff Training on Social Engineering Issues

You indicated that your agency does not provide periodic training and messaging to staff regarding phishing frauds and scams. Did you know that hackers often exploit employee error or ignorance by identifying vulnerabilities that allow them to hack data? For example, a hacker might prey on employees with weak passwords, or seek out an employee's lost password, or manipulate an employee into sharing data through forms of social engineering such as phishing or blackmail.

We recommend that you begin providing periodic staff training and messaging to reduce the risk of social engineering losses at your agency. Some cyber liability insurance policies offer proactive risk management resources, such as educational materials or access to helpful training on data security. Some insurers also offer penetration testing or other forms of testing to identify vulnerabilities in your organization's IT infrastructure. Take advantage of any data security training and testing available to you. Remember that your data security efforts will be fruitless if your employees do not follow your protocols. Human error is a major source of cyber liability exposure, an exposure you can mitigate by adopting clear policies and providing appropriate training.

Topics you might want to cover in your training include: BYOD policies, network security protocols, encryption instructions, relationships with tech vendors, data breach notification laws, information on the nonprofit's cyber liability coverage, and your insurer's requirements for filing cyber liability claims. Ensure that your employees recognize how easily a data breach can occur, and how detrimental a breach could be to your entity's mission.

Phishing Tests or Exercises

You indicated that you do not conduct phishing tests or other exercises to gauge the level of awareness of your staff members with respect to social engineering scams. We recommend that you address this gap as soon as possible. All employees will be better prepared to protect data after being trained and informed about data privacy standards and common frauds. It's dangerous to assume that your employees know better than to click on links in suspicious emails.

Monitoring Employee Use of Technology

You indicated that your nonprofit does not monitor employee use of technology. There are two basic reasons for doing so. First, monitoring employee use of technology backs-up any steps you have taken to dispel employees' expectation of privacy while using your systems. In addition, monitoring employee use of technology puts your organization in the best position to detect possible problems before they become catastrophic. As is true with other risk management techniques, it's important to strike a balance. You should balance affordability of monitoring with the potential fallout and benefits of monitoring. You don't want monitoring to seem so invasive to employees that it damages morale in your organization. Nor do you want to spend a disproportionate amount of resources on monitoring compared to the threat of loss to your systems. It's also important to keep in mind that a significant percentage of system misuse is due to ignorance-an employee may not recognize that what he or she is doing violates your policies or poses some risk to your assets. Monitoring can provide a way to detect inadvertent missteps that happen despite the presence of a comprehensive technology policy.

As with any risk management strategy, it's important to obtain a broad perspective on the "problem" you're trying to address as well as the "solution." So you might consider asking a group of employees to

examine this issue and collaboratively develop an appropriate monitoring policy. Encourage the team assigned to this task to focus on practical solutions. For example, it would not be practical to install cameras directed at each employee's computer screen and hire a full-time security detail to "watch the monitors" - similar to the systems at Las Vegas casinos. But it may be feasible to have a policy requiring that someone check an employee's e-mail inbox whenever an employee is out of the office for five or more consecutive days. Some nonprofits require that mail for employees on vacation or on leave be automatically forwarded to a "back-up" person for processing. The rationale or "business reason" for this type of policy is to ensure that client questions and concerns are forwarded to someone who can assist in the absence of the employee. If the person retrieving messages notes anything that suggests a violation of the technology policy has occurred, he or she can report this to the appropriate person in the agency (e.g. a e-mail message that demands the recipient stop sending harassing or profane messages). While some nonprofits may see such a policy as inappropriate, others would see this as an important policy to insure client-responsiveness. Also consider whether such monitoring should apply equally to incoming U.S. Mail and voice mail messages. In all cases, you need to carefully fashion a policy that will work within the context and culture of your organization.

Using Vendors

You indicated that your nonprofit uses independent contractors and/or firms to perform various technology-related functions. Vendors can be the source of a variety of risks when implementing changes within your organization. New systems usually mean the involvement of new vendors - companies and individuals with whom you may not have longstanding relationships.

When looking for a new vendor, whether for software, service or a fully outsourced technology operation, the best way to identify prospective providers is through word-of-mouth referrals. Minimize your risk of receiving poor service by asking around at local meetings, conferences, and user groups. People are usually willing to share horror and success stories, so all you have to do is ask. Check the service record of the vendor by requesting a list of references from current nonprofit customers. If the vendor is hesitant to supply references, consider moving on to another provider.

Checking Vendor References

You indicated that it is not your practice to check several references before engaging a technology firm or vendor. We recommend that you adopt a practice of checking the credentials of vendors that will be providing significant systems or long-term service to your nonprofit. Spend the time required to conduct the due diligence that will prevent mishaps, frustration and disaster down the line.

Before asking for a reference, explain how your agency intends to work with the vendor.

Examples of reference questions include:

- How responsive is the company is to calls for service and assistance?
- (If applicable), How reliable is the company's equipment, software or other systems?
- What do you know now about the vendor, that you wish you had known at the start of the relationship?
- Would you recommend the vendor as a technology partner for our organization? Why or why not?
- What recommendations would you offer to an agency such as ours, working with this vendor for the first time?

In addition to checking references, resolve to conduct other forms of due diligence before engaging any technology vendor or partner. For example:

- Determine the extent of the company's expertise. Find out if the company specializes in networks, communication, database programming, or application programming before you sign the contract.
- Make certain that the company understands your nonprofit's mission, your technology needs, and your process or resource constraints. You may find a vendor that offers the high-tech expertise you need, but if they disregard the nuances of your environment, your collaboration may be doomed to failure.
- Determine whether the vendor has "done this before." Hopefully the vendor will report that it has successfully assisted other organizations with similar projects, however, if your nonprofit is on the cutting edge, you may be entering territory that is unfamiliar to both parties. You need to know whether your nonprofit is a test case and plan accordingly.
- Obtain a list of relevant references - get a long list of references. Consider asking specifically for references that remind you of your nonprofit - such as clients that have less than 100 employees, or clients that offer similar services. While you may decide not to rule out a vendor simply because the company hasn't worked with a similar nonprofit before, if they have done so you'll want to make sure you check that reference.
- Request confirmation concerning the staff members that will be working on your account (installing equipment, troubleshooting, training staff on new software, etc.). Ask for information on their credentials and training, as well as the company's procedure for replacing your contacts if they leave for greener pastures. As in other industries, don't be surprised if a smooth-talking marketing rep is replaced with a techno-talking "freshman" staff member minutes after the ink on your contract is dry.
- Negotiate a detailed service/sales agreement that specifies what will be provided by whom, for how much and when. The contract should contain a cancellation provision that allows you to cancel the contract for a reason or no reason at all. The contract should also specify the payment terms, and enable you to withhold the final payment until the system has been installed or the service has been provided to your satisfaction. Consider including response times in your agreement. For example, in a service contract for technology troubleshooting and network maintenance, you might require a 48-hour response time in the event a single PC malfunctions but a two- to four-hour response time if your server goes down. Negotiating response times in advance will enable you to avoid the hand-wringing and regret that occur when the problem materializes.
- Designate a key contact and a backup in your nonprofit for all technology vendor relations. Don't put all of your technology resources in one basket. Make certain that a second staff member is knowledgeable about the vendor contract and able to answer basic questions that might arise during a typical service call.

Technology Contracts

You indicated that your nonprofit does not always use a written contract when you hire technology firms or independent contractors. Contracts are valuable risk management tools. A contract should spell out the expectations and requirements of each party and reduce the risk of surprise and disappointment. It can also provide a helpful roadmap in the event things turn out differently than expected and some deviation in the original plan is required. But a contract is only useful in this regard if it contains a sufficient degree of details and anticipates various contingencies.

Here are some tips that will help you transform a contract for technology-related products or services into a valuable risk management tool:

- Don't rush the process of contract negotiations with a technology provider. You've spent a great deal of effort and time identifying the best vendor for your nonprofit, or the most appropriate systems or software. You'll do the organization a disservice by simply accepting a standard form

contract presented by the vendor or rushing to sign off on the deal so you can get on with the installation or service.

- If the contract will affect more than one person in your organization, involve a team in reviewing and scrutinizing the promises made by the vendor. Do they reflect the needs of the organization and its personnel?
- Use S-P-E-C-F-I-C-S in any and every technology contract. Technology contracts may be lengthier than other contracts used by your nonprofit because of the inclusion of detailed system specifications or other deliverables. A contract for a particular product or software should explain, in layman's terms, what the product is, how it will function, and what result is intended from its use at the nonprofit. When a technology firm presents a proposed contract for your review, you can expect that it will contain technical language. Make certain you understand the terms and language in the contract, or that they are specifically defined in the contract. Keep in mind that your definition of "database" or "system" may differ from the perspective of the contractor.
- State key assumptions on the part of your nonprofit or the vendor in the contract. In the case of a vendor who will provide occasional troubleshooting assistance, do you expect that the company will send a technician to help get the server back on line or is access to a technician via an 800 number or interactive e-mail list-like service acceptable?
- Strive to achieve a contract between your nonprofit and vendor that considers a very wide range of contingencies, such as delays, system failure, personnel changes and contract cancellation. No one (except contract lawyers and professional risk managers, perhaps) likes to discuss contingencies during contract negotiations. But this discussion is absolutely necessary to protect the interests and resources of your nonprofit. Specifying the steps that will be taken if there is a dispute will save time and headaches should one arise. Think of the contract as a roadmap with various on-ramps and off-ramps clearly marked.
- Make certain the contract is clear about the nonprofit's ongoing obligations and responsibilities. There is a natural tendency to feel these contracts are one-sided: the non-technology nonprofit is receiving something from the technology provider. But in almost all cases, the nonprofit must live up to certain obligations and provide a level of support and assistance necessary to create and maintain a successful relationship. Do the people who must comply with the terms of the contract understand their obligations?
- Make certain the contract clearly and explicitly address the issue of ownership. Who owns what? Will the nonprofit "own" the fund-raising software it has purchased from the vendor or only a license to use the software? How will individual contributions of owned material be returned (such as each file that makes up the nonprofit's solicitation database) if the contractual parties decide to split? Vague statements about the vendor's obligation to return the nonprofit's property in the event the contract is cancelled are probably insufficient.
- Include specifically how and when payments to the vendor will be made. If the contract is for trouble-shooting services, monthly invoices with a cap may work well for both parties. If you're contracting for the development of customized software, you should include a "holdback" amount payable only upon your final acceptance of the product. Without this financial incentive to complete the project, you may wind up with software that doesn't work as you expected and a contractor who has moved on to other assignments. Carefully scrutinize any language that allows the contract price to be re-opened based on changes in scope or other issues.
- Include a well-defined "exit strategy" in the event either party seeks to end the relationship. Some of the issues that should be addressed as part of the contract negotiations, and therefore reflected in the final contract language, include:
 - Who will be responsible for unpaid debts or other obligations?
 - What length and form of notice is required to cancel the contract?
 - How will intellectual property assets be divided upon contract cancellation?
 - If the partnership or relationship is one well known to the nonprofit's constituents, how will the parting of company be announced?

- If licenses have been granted to use software or equipment, how will these be cancelled or reversed?
- What equipment, documentation or other assets must be returned by the contractual parties within what timeframe?

Data Breach Plan

You indicated that your agency does not have a data breach plan in place. We recommend that you address this gap as soon as possible.

Include the following topics in your plan:

- ***What constitutes a data breach?*** State security breach laws generally define what constitutes sensitive information. But no two state laws are identical. Familiarize yourself with the applicable state laws in the states where your organization operates.
- ***Who must we notify?*** Most states require organizations to notify all consumers affected by the data breach. Some states also require you to notify the state attorney general or consumer reporting agencies.
- ***How should we contact those affected?*** Some states require that specific communication methods be used to notify consumers of a data breach.
- ***How quickly must we contact those affected?*** Every state notification law includes a timeframe for data breach notification. If you fail to notify your consumers within the appropriate timeframe, your nonprofit could face litigation and harsh fines. In some cases, however, law enforcement that require that an agency delay notification if the law enforcement agency believes that disclosure will impede an ongoing investigation.
- ***What resources are available from our insurance providers?*** A growing number of insurers provide proactive risk management help, and have experts on call to either answer or help you determine the answers to the questions that follow.

For information on the breach notification laws in states, see the [Security Breach Notification Laws page](#) of the National Conference of State Legislatures.

Cyber Liability Insurance

You indicated that want to better understand your existing cyber liability insurance, or that you don't have coverage despite having exposure to cyber liability claims. Your insurance agent or broker is the go-to resource for information about what's covered under the cyber liability policy you already purchased, or one you're considering. Each insurer offers different forms of coverage, but many policies address a few familiar coverage areas. Work with your agent or broker to purchase a policy that adequately protects your nonprofit. Understanding your coverage is critical as cyber risks and cyber insurance packages continue to evolve rapidly. Cyber liability policies may include third party coverages (items 1-5 below) and also first party coverages (items 6-7). Third party coverage protects the insured organization against claims that arise from losses suffered by third parties, such as donors or clients. First party coverage protects the insured for its own losses. The typical coverages available through a cyber liability policy include:

1. **Notification Expenses:** Coverage for notification expenses helps protect your nonprofit from the strain on human and financial resources in the wake of a breach.
2. **Crisis Management:** Some cyber liability policies offer crisis management coverage to cover the cost of retaining a public relations firm or consultant to help minimize the damage to your organization's reputation.

3. **Regulatory Investigation Expense:** Some cyber liability policies include coverage for investigation costs, and fines and penalties levied for failing to comply with data breach notification laws.
4. **Data Breach Liability:** Defense costs for claims brought by a stakeholder who suffered a financial loss after their personal data was compromised.
5. **Content Liability:** Financial protection related to the content of your website, blog or social media sites, such as coverage for intellectual property claims, invasion of privacy, or personal media injury (defamation, slander, libel) via electronic content.
6. **Data Loss & System Damage (or Data Restoration Coverage):** Property policies may not cover the *data* stored on computers. Most cyber liability policies cover loss or theft of PII; some policies also include coverage for computer forensic analysis, the process used by an expert to assess the scope of the damage.
7. **Business Interruption:** Cyber policies often cover events related to the temporary or long-term shutdown of an insured's operations, such as: loss of revenue during the downtime after a hack, denial of service, damage to systems or data caused by a virus, etc.

Special Events

Introduction

This section of your report contains recommendations about managing special event risks. The suggestions in this report follow the subtopic headings for the module: Planning Safe Special Events; Key Personnel; Partners, Sponsors and Vendors; Facilities; People; Special Features; Accident and Crisis Management; and Insurance for Special Events.

Most nonprofits conduct special events from time to time. Yet risk management issues are often omitted from the planning process. In the excitement that surrounds various planning and fundraising activities, the possibility of someone getting injured may not be on the radar screen. The risk that the event will generate less than the event goal may be acknowledged, but not addressed.

While most events are delivered without serious harm or injury, an unanticipated accident at an event could be disastrous for your nonprofit. Every nonprofit that conducts special events should integrate risk management into the event planning process.

No action warranted

Crisis Management and Business Continuity Planning

Introduction

This section of your report contains feedback and recommendations based on your answers to questions in the Crisis Management and Business Continuity Planning module.

Crisis Management Plan

You indicated that your agency has components of a crisis management plan in place, but not an up-to-date plan. An up-to-date plan can substantially increase your confidence and comfort when a crisis looms. Keep in mind that focusing on the source or nature of the crisis is not often the best place to begin crisis management planning.

Crisis response team

Identifying who will be a part of the crisis response team is an important part of effectively addressing a crisis. When putting together your team, consider the following:

Define roles - Your organization will need to draw on various abilities and perspectives in a crisis situation. Knowing who will fill these roles in advance will assist in responding quickly. Consider some of the following roles but keep in mind that the exact composition of the team may vary given the human resources you have available.

- Crisis commander - You'll need to designate someone to take charge and to coordinate response efforts.**
- Finance / Legal / Insurance experts - Having expertise in these areas will help inform critical decisions that will need to be made**
- Response leaders - This role is to address specific response. It may be something specific like providing medical assistance or coordinating an evacuation. It may also address tasks that are delegated by the crisis commander.**
- Communicators - One or more people should be charged with helping facilitate communication internally and externally during the crisis.**
- Resource protectors - Resources range from things like data and facilities to the people connected to your nonprofit - staff, volunteers and clients as well. Resource protectors are charged with addressing these safety needs during a crisis.**
- Subject matter experts - Be aware of the specific skillsets in your organization and draw upon those people when necessary for a specific crisis. This role may change personnel depending on the nature of the crisis.**

Establish backups - Having redundancy in the assignments helps to reduce gaps in coverage of crisis responsibilities. It is helpful to identify the backup person for each role. Alternately, highlighting additional informational resources or sources of aid is helpful where backups are not available.

Avoid letting the crisis team get too large or it may be difficult to coordinate activities during a crisis. You are encouraged to involve a wide range of people during the planning phase in order to identify valuable resources to address a crisis. However, the actual core response team should be relatively small.

Key Information

It is important to have access to the right information during a crisis. Make sure the plan and its information is easily accessible to the crisis response team. Electronic and hard copies should be available in multiple locations - redundancy can be key in a crisis situation. In general, look to include the following information in your crisis management plan.

- **Organization chart with roles, photos, contact information and other pertinent information about the Crisis Response Team. This should also include information about who serves in a backup role to the members of the team.**
- **Board roster and contact information**
- **Roster of key vendors & partners with contact information**
- **Location (primary and backup) of essential documentation and resources (insurance, financial, etc.)**
- **Pre-developed responses to crisis situations - In some cases, your team will have made plans for specific situations.**

Facility Information

Although some crises may not involve your facility directly, a facility emergency like a fire, active shooter, or medical emergency will call for facility-specific information in its response. Facility information may include:

- **Floor plans**
- **Evacuation routes & procedures**
- **Guidelines for gathering points for staff**
- **Organization chart / checklist of all staff who work in facility along with their contact information**
- **Contact information for building owner, security or other facility stakeholders**
- **Location of emergency kits, fire extinguishers, AED's, or other emergency equipment**
- **Contact information for local first responders and authorities**

Responses to Common Emergencies

There are some emergencies that are more easily identifiable and allow for the development of a specific plan to address the crisis. A fire in your facility, a medical emergency, a bomb threat, or severe weather incident may feel like they are unlikely but you will be grateful for advance planning should one occur. Use a planning committee to catalog these scenarios and determine what the appropriate response should be. Develop the documentation to outline the plan but remember to keep things brief. In the event of an emergency, it is unlikely that someone would have time to read a long manual to determine what to do. Practice the plans that you develop in order to determine the efficacy of the response. This will help identify gaps in the planning and will provide for a more effective response.

General Guidelines

It would be impossible (and impractical) to develop a comprehensive crisis management plan to address any and all crises that may affect your organization. Although you may have plans to respond to specific emergencies like severe weather or the unplanned departure of a key member of your team, it is also important to develop some general guidelines for crisis response for other

unexpected situations.

Start by being mission-focused and having compassion for the people affected by the crisis. Utilize organizational values to help guide decisions. Let your crisis response team do its work and stick to the crisis management plans that you have developed. Once you have addressed the safety and well-being of the people involved, move to protect your resources and the ongoing viability of your organization. As the crisis abates, look toward the recovery phase.

Crisis Review

After a crisis, the initial feeling will often be to move on and try to 'get back to normal' with day-to-day operations. Resist this urge and make sure to conduct a postmortem of the crisis event and your organizational response. Crisis events rarely unfold according to expectations and your crisis management plan may have contained strategies that were more or less effective as a result. Review and reflection after the event will assist in improving the response to future crisis events, whether it is a reoccurrence of a similar event or something less related.

Crisis Communication Plan

You answered that you do not have a crisis communications plan. Some agencies integrate crisis communications materials into their overall crisis management plan, while others maintain a separate crisis communications plan. Remember to choose the approach that best suits your agency.

A crisis in your organization could take many forms, from a snowstorm that interrupts your operations to a major incident that could attract litigation and negative scrutiny. Preparation for a crisis event reduces the potential damage to your mission and increases the opportunity to sustain and build the support of key stakeholders. A thoughtful crisis communications plan is key to being prepared for any crisis—regardless of its source, magnitude, cause, or timing.

Effective crisis communications planning and response occurs in three phases. First, you need to start planning for a response to a crisis long before one ever occurs. Next, you need to be prepared to execute your plan during the crisis itself. Finally, you should conduct a review after the crisis is resolved. This will allow you to revise and expand your plan to address future crises.

The planning phase is the first step.

- Consider what kinds of crises may occur to your organization. What has happened to your organization before? What has happened to other organizations similar to yours? Avoid falling into the trap of thinking “that could never happen again” or “what happened to them would never happen to us.” Think about a wide range of possibilities and identify issues common to many or most of the scenarios. For example, inability to access or use regular facilities or equipment, absence of key personnel, intense media scrutiny, inability to provide regular services or support to clients, etc. Also, consider your geographical location and any hazards that may be unique to your organization based upon where it is located. Hurricanes, tornadoes, wildfires, and earthquakes are all natural disasters that could significantly disrupt your operations without proper planning.
- Identify the members of the team (by role) who will manage communications you're your nonprofit during a crisis. In some organizations, the person in charge of the crisis response team may not be the primary spokesperson. In large organizations, there may be different spokespeople for internal and external audiences. Make sure your primary communicator has a backup person as well. Redundancy is important in all crisis planning. Consider

sending your key spokespeople through media or crisis communication training.

- Determine the most likely messages that will need to be shared. Focusing on the safety of everyone involved will take precedence in most emergency situations but making the connection to your mission is also key. For example, “Our mission is to provide counseling for at-risk youth. We are suspending service delivery while we make sure that our building is safe for our clients and staff. We will resume our counseling services just as soon as we receive word that it is safe to return. Please call the following number if you have any questions about your upcoming appointments, or the availability of alternative services during this time.” Develop common talking points for your spokesperson.
- Consider the chain of communication within your organization and how you will be able to quickly get word out to your employees and volunteers about a crisis before they hear about it through media reports. Phone trees, text messaging, and internal email communication are all available channels to connect with your employees and volunteers in a crisis situation.

When a crisis occurs, resolve to provide clear and consistent communication to internal and external stakeholders.

- Express care and concern appropriate for the situation.
- Take responsibility for addressing the crisis and convey the commitment to doing so in a compassion, timely, and effective manner.
- Share what you are doing to take control of the situation, to address critical incidents, and to prevent the situation from getting worse.
- An important component of crisis communication is communication with media organizations. To be prepared to communicate effectively, make a list of media contacts in your community that you can reach out to and respond to during a crisis. Knowing who you will call or who you can expect to hear from will save valuable time during a crisis.

Once the crisis is resolved and your staff have had time to recover, it’s time to reflect on what happened to update the crisis communication plan for future emergencies.

- Ask lots of questions: What worked? What didn’t work? Where did we not have a plan B? What did we not expect?
- Update your crisis communications plan with this new information.
- Ensure that you have appropriate resources going forward. For example, does your spokesperson need additional training?

Business Continuity Plan

You indicated that your agency has elements of business continuity planning in place, but that your plan may not be adequately comprehensive or up-to-date. We recommend that you review the existing pieces to determine whether you have identified:

- mission critical functions--those functions that cannot be curtailed, even during an interruption to normal operations;
- plans for short-term replacement for workspace / equipment / communications if regular resources are not available (e.g., telecommute options, alternate office space, computer equipment rental)
- access to and protection for critical organization data

Volunteer Risk Management

Introduction

This section of your report offers feedback and recommendations based on your answers to questions about volunteer service at your agency.

No action warranted

Fundraising and Resource Development

Introduction

This section of your report contains feedback and recommendations based on your answers to questions in the Fundraising and Resource Development module.

Working with Institutional Funders

You answered that your nonprofit may not always carefully consider the downside risks of funding from institutional partners before it seeks or applies for such funding. Institutional funders--such as private, family and community foundations or corporations--can provide valuable financial support for your mission. The rewards of this connection could be training support for developing organizational capacity or fiscal support that serves as start-up capital for a new project. However, funding from foundations has become more targeted at supporting specific purposes or initiatives rather than being directed towards the ongoing support of the general operation of nonprofits. The pursuit of grant money may further complicate the financial picture of the organization if certain risks are not acknowledged and addressed.

Consider the following potential risks:

- *Mission creep* - Nonprofit leaders may agree to services outside of or tangential to the primary mission of the organization in order to secure funds. This leads to a lack of focus on the primary mission of the organization.
- *Use of more resources than expected* - By not factoring in all of the costs that may be incurred in fulfilling the terms of the grant, you may end up spending more than you receive. Don't make the mistake of undervaluing the cost of vital infrastructure (finance, HR, IT, risk management, facilities management, etc.) in your grant proposals. Wise funders recognize that these support systems are essential to delivering high quality, effective programs and services.
- *Request for return of funding* - If the terms of the grant are not met, there is the chance the funder may ask for unused-- or even worse, misallocated--funds to be returned.
- *Loss of relationship with institution / funder* - Don't make the mistake others have made--taking institutional donor relationships for granted and assuming that similar funding will be available in future years.

To prepare for your relationship with an institutional funder, take these steps:

- Look for funding organizations whose priorities are directly aligned with your mission and specific projects or initiatives already underway or on your drawing board.
- Conduct due diligence on prospective institutional funders to ensure that the relationship is one that you want to have. For example, try to identify an existing grantee nonprofit with whom you have a relationship, and reach out to ask about their experience with the funder.
- Don't get caught in the heat of the moment in the pursuit of financial support. Every grant or donation, regardless of its size, poses risks to the grantor as well as the grantee. Be realistic and reflective as you consider opportunities to receive support from institutional donors.
- Always review the details in any paperwork provided to you as a grantee, before you sign the grant agreement! A best practice is to ask someone not involved in the 'ask' to also

review that paperwork. Make certain that all of your questions and concerns have been asked and addressed before you agree to the terms of any new grant from an institutional funder.

Tracking Expectations for Funding

You should carefully review the material that comes along with any financial award. Look for some of these common expectations (and be aware of any specific details as well):

- All expenditures of funding must be tracked
- Records must be kept for a certain amount of time after the termination date
- Status reports must be provided on a regular basis (monthly, quarterly, etc.)
- Communication to the funder about organizational changes at your organization
- Access provided to the organization (records, personnel, etc.) during the grant period, and possibly for some time thereafter

Utilize a reporting system so that funding conditions can easily be tracked and checked. Make sure the tracking is updated regularly and that the system is used consistently across all institutional funding efforts.

Compliance with State Charitable Registration Laws

You indicated that your nonprofit may not be registered in all states where you solicit individual donations. According to Don Kramer, editor of NonProfit Issues, "Charities soliciting charitable contributions to further their mission can be tripped up significantly if they don't pay attention to the requirements for charitable solicitation registration."

Keep in mind that:

- 39 states and the District of Columbia require that your nonprofit register before asking residents for contributions
- The requirement to register applies in your home state, but also in any other state where you are seeking donations
- States may impose fines and issue injunctions prohibiting solicitation of residents if you fail to register
- When your nonprofit receives a contribution from a resident of a state, sends a thank you, and later requests another donation, you are engaging in direct solicitation that triggers the registration requirements

For more information on this topic, see:

- [*Charitable Registration: Resolve to Comply*](#), by Don Kramer
- [Charitable Registration State Map](#)
- NASCO - [Listing of Federal Government, National Resources and State-Specific Resources](#) - scroll down for contact information for each state's regulatory office, including the web page relevant to charitable registration

Use of a Gift Acceptance Policy

You indicated that your nonprofit does not have a gift acceptance policy to support the careful evaluation of individual gifts. Accepting cash or property from an individual donor can trigger obligations for your nonprofit as well as the donor. And in some cases an organization must 'look a

gift horse in the mouth.' This expression, which dates to 5th century literature, refers to the fact that one looks in a horse's mouth to determine its age or health. A careful examination of a donor's intent and the costs of accepting the gift may at one time have been considered rude. Risk-aware and risk-savvy nonprofits recognize that part of the responsibility of mission stewardship is the careful consideration and thoughtful acceptance of gifts, regardless of the source. More unusual donations like real estate, bequests, vehicles, or stock come with an additional level of scrutiny prior to accepting the donation as well as management once they come into your possession.

Here are a few risk tips related to gift acceptance policies:

- *Create a policy that suits your nonprofit* - make certain that your specific requirements, limitations and priorities are reflected in your gift acceptance policy
- *Reflect on gifts you have accepted and those you have turned down* - also consider gifts that the organization may consider in the future
- *Obtain board approval of your policy* - this single step provides support for your development team, who may on occasion have to tell a donor that "I'm sorry, but our board policy is that we aren't able to accept gifts of this type."
- *Publish your gift acceptance policy* - making your policy readily available to prospective donors is an invaluable time-saver for your staff and volunteers.
- Reference your policy in your IRS Form 990 filing - keep in mind that nonprofits that report having a gift acceptance policy must complete [Schedule M](#) of the 990 to report Noncash Contributions.

For additional information on gift acceptance policies, see:

- [*Why You Need Gift Acceptance Policies: How Thoughtful Planning about Non-Cash Gifts Can Improve Your Donor Relationships*](#), by Katherine Swank
- [*Gift Acceptance Policies*](#), National Council of Nonprofits
- [*My Risk Management Policies*](#), Nonprofit Risk Management Center (if you are a subscriber to this NRMC web tool, log in to create a custom gift acceptance policy for your organization)

Individual Donor Risks

Individual solicitation is one of the most popular methods of fundraising and its growth has been rapid. Technology has enabled this growth by facilitating multiple methods for connecting with donors and gathering contributions. Conversely, laws and regulations have also continued to evolve in order to track the activity of donors and beneficiaries. Although the potential for rewards of individual contributions has increased, so have the commensurate risks.

Consider these potential risks:

- Aggravating a donor by violating their privacy
- Accepting a donation from an individual or organization you don't want associated with your nonprofit; or returning and / or refusing a donation for the same reason
- Handling donations inappropriately
- Reporting donations inaccurately and triggering an audit
- Not being prepared for inclusion in the audit of a donor

In addition to the actual donation received, information about the donor gets collected as well. Your organization may have the opportunity to utilize this information aside from maintaining

your own donor database. Be completely transparent with how you use any information collected about donors and give them option to remain confidential. Subsequently, you need to maintain privacy by keeping that information secure.

Privacy extends to security of any electronic records as well. You need to consider what kinds of personal information you need to store, what kinds of guidelines or regulations govern the storage of that data, and how you will secure that data. In addition, consider the possibility of a data breach and your response in the event that happens to your organization and exposes donor information.

The Association of Fundraising Professionals collaborated with several other organizations to create a Donor Bill of Rights. This document provides guidance on expectations of the relationship between a donor and an organization. It is a great resource to consider as you establish connections with individual donors.

Finally, consider the types of donors you may connect with and the types of donations that you may receive. When it comes to donors, overreliance on a single donor or small group of donors may leave you financially vulnerable if their charitable priorities change. In addition, the types of things donated – money, real estate, bequests – all have particular considerations when it comes to accepting them.

Managing the Risk of Unhappy Donors

You indicated that your nonprofit doesn't have a process for managing the risk of unhappy or disgruntled donors. Some experts compare the care and stewarding of donors to customer service. If you've ever been an unhappy customer but were soothed by a well-trained customer service representative, you know that great service can turn a grumpy mood into a grateful one. The authors of *A Complaint Is a Gift* believe that an unhappy customer can become a best customer. The same is true with unhappy or disgruntled donors. How?

- Don't ignore donor/customer complaints.
- Do recognize that disappointed donors may ask for--and be entitled to (in some cases) refunds.
- Don't assume that the donor's initial comment or complaint tells the full story of their experience. Ask for additional information, and you shall receive!
- Do assume that an unhappy customer will tell 10+ friends about their experience with your nonprofit.
- Do everything reasonably possible to address the donor's complaint, including asking a more senior person in the organization to follow-up.
- Do let the donor know how their concern has been addressed, and thank them profusely for providing feedback that will make your nonprofit stronger.
- Do not adopt a complaint process that will heighten the unhappiness of an already unhappy donor (e.g., a complicated online form with multiple required fields!). For an example of what NOT to do, see www.tsa.gov/contact-center/form/complaints.
- Do not use an auto-reply feature or generic response to donor complaints. To see an example, test the complaint form above used by TSA.
- Do provide training to ALL staff on handling donor or customer concerns.

For additional tips and ideas about managing this risk, see:

- [*How to Handle a Disgruntled Donor*](#), by Allison Gauss
- [Top 10 Fundraising Risks for Nonprofits](#), Nonprofit Risk Management Center

- [Honoring Donor Intent: 5 Steps for Getting it Right](#), Armanino

To learn about the risk that disappointed donor will ask for--and be entitled to--their money back, see:

- [When Unhappy Donors Want Their Money Back](#), by Charlie Wells, *The Wall Street Journal*

To learn "10 Ways to Kill Your Nonprofit," including #4 - Dehumanize your donors, read this [article](#) from *NonProfit Quarterly*.

Compliance with the CAN-SPAM Act

You indicated that your nonprofit does not have practices in place to manage the risk of non-compliance with the CAN-SPAM Act. According to the Federal Trade Commission (FTC), the Act is a federal law that "establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations."

- The CAN-SPAM Act applies to all commercial messages, not just bulk email.
- A commercial message is: "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service."
- The law does not prohibit nonprofits from sending unsolicited bulk emails, but such emails must follow certain requirements. For example, they must be from a legitimate, active email address, provide accurate header and mailing information, contain an accurate subject line, and provide recipients with an opt-out path.
- Each separate email in violation of the law is subject to penalties of up to \$40,654, and more than one person may be held responsible for violations.
- Although the FTC does not have jurisdiction over nonprofits, state attorneys general are empowered to enforce the law.

For more information on the CAN-SPAM Act, see this [webpage](#) from FTC, and also the CAN-SPAM checklist featured in this [article](#) from GuideStar.

Government Contracts

Many nonprofits look to government contracts as a principal source of funding. According to the National Center for Charitable Statistics, "Fees for Services & Goods from Government" represented 23.1% of nonprofit revenues in 2014, second only to "fees for services and goods from private sources" (50%). (Source: Nonprofit Sector in Brief 2014 - National Center for Charitable Statistics).

Government grants and contracts come with a set of challenges that may differ from the risks associated with other funding sources. If you are relying on government financial support, remember to consider:

- *Underfunding for infrastructure* - Government contracts may not fully cover these costs, but weak infrastructure may make it difficult or impossible to meet the program and service expectations of your funders.
- *Risk of late payment* - Many government contracts are structured on a reimbursement basis, which means that your nonprofit will have to cover costs up front and wait to be reimbursed.
- *Complex reporting requirements* - These requirements will likely put an additional administrative burden on your organization. Try to learn as much as possible about

reporting requirements before you bid on or apply for a government contract. Ensure that your organization is in position to comply before you apply.

Accuracy of Projections for Incoming Donations

You indicated that your projections for incoming donations may not have been accurate in recent years. It's important for control purposes, and the accurate presentation of a nonprofit's financial status, that contributions are reasonably estimated. Although there's understandable pressure to do so, contributions should never be projected at unrealistic levels. In addition, budget projections should be periodically compared to actual results, and significant differences should be investigated and reported to the Finance Committee. A single year in which results differed substantially from projections does not necessarily suggest the need for an overhaul of your budgeting process. For example, your nonprofit may face a dip in donations following a community-wide disaster, when some donors decide to give to disaster relief efforts instead of your organization.

Diversifying Revenue Streams

You indicated that your nonprofit has not adopted goals with respect to the diversification of funding sources. Perhaps your agency has a single, highly reliable source of funding. Or your revenue streams have been judged adequately diverse. Striving for diversity in revenue streams reduces the risk that your organization will be substantially, negatively impacted by an unexpected shortfall in a single revenue stream. Although fewer revenue streams may be easier to track and administratively support, this situation dramatically increases the risk that you will be negatively impacted when a single revenue stream falls short of expectations. Diversifying your revenue streams minimizes the impact of a single shortfall but having multiple sources also creates additional responsibilities, obligations and risks.

There are many types of revenue sources available to raise funds for your nonprofit. Membership dues, special events and fees for services are just a few examples. Should you decide to adopt goals to increase the diversity of revenue sources, consider the following risk tips:

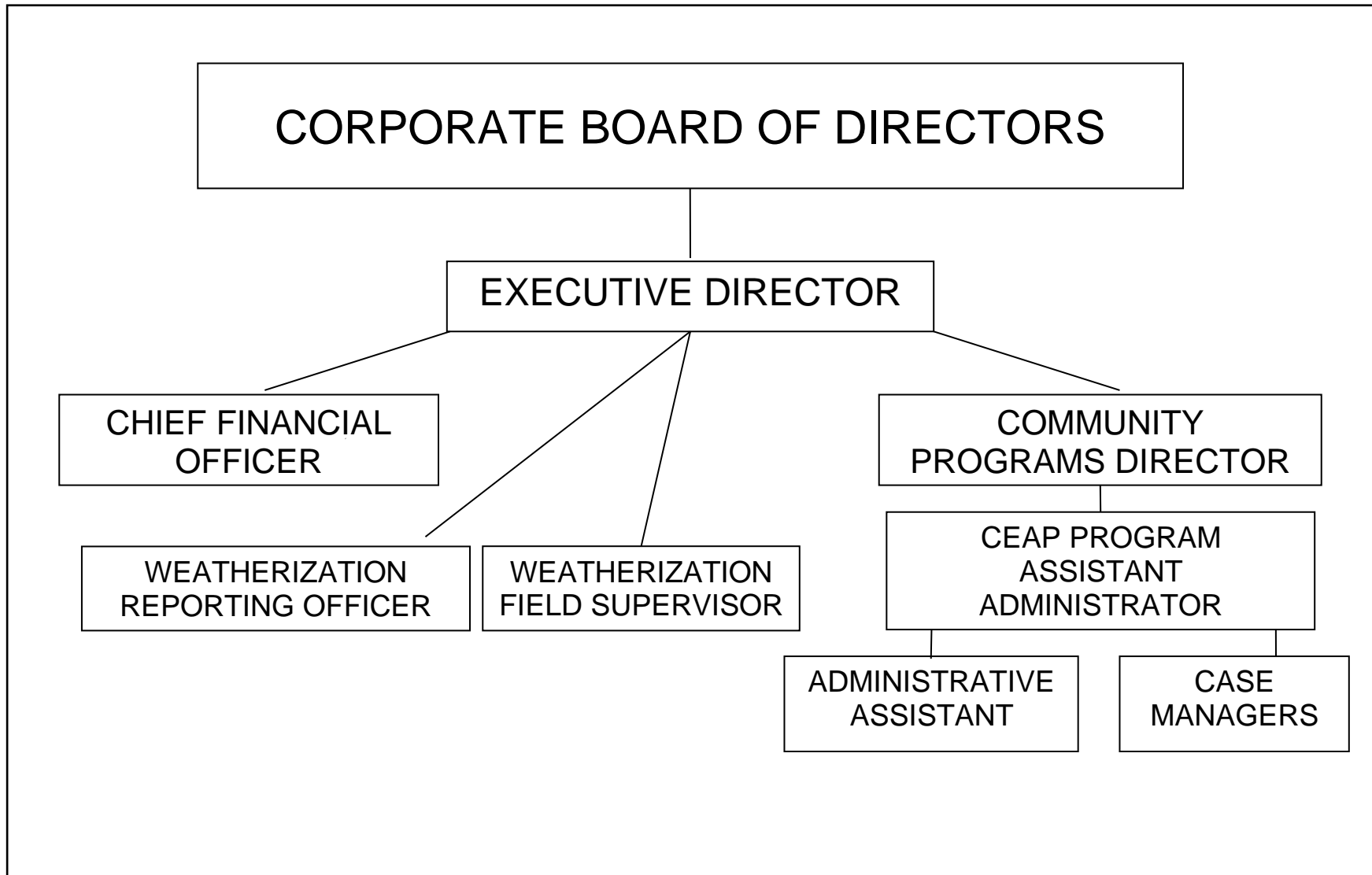
- Will this method help us to advance our mission? (For example, soliciting individual donations could help increase awareness of your mission.)**
- How will various stakeholders perceive this method and how does that perception affect our reputation?**
- What are the costs associated with the method and what kind of return can be expected given the costs?**
- Is there initial or ongoing infrastructure that would need to be created or maintained to support this method?**
- Do we have the infrastructure supports in place to support this new stream of revenue?**
- What criteria will be used to determine if the method is successful in raising revenue?**
- Have we 'done our homework' with respect to understanding the spectrum of risks and rewards associated with this fundraising strategy?**
- Is a gradual ramp up possible versus going 'all in'?**

Service Delivery Risks

No action warranted

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CONCHO VALLEY COMMUNITY ACTION AGENCY
ORGANIZATIONAL CHART



Concho Valley Community Action Agency
Mission Statement and Core Values

Mission

“CVCAA provides a variety of services in partnership with community resources to improve lives and empower people in the Concho Valley area.”

Values

COMPASSION: We will use compassion every day through our actions with others. Compassion involves suspending judgement so that we can appreciate others situations that may be different from our own.

HONESTY: We value the truth and will always pursue openness and honesty.

INTEGRITY: We value integrity in three parts: integrity to mission; integrity to customer; and integrity to self.

RESPECT: We will treat all clients and co-workers the way we wish to be treated ourselves; with kindness, honesty, empathy and understanding.

POSITIVE ATTITUDE: We will cultivate a positive environment where we care about our relationships with coworkers, customers, and community partners. We are passionate about what we do, and we will exhibit that passion with others every day.

ACCOUNTABILITY: We will take responsibility for our actions. We will deliver our best in all that we do and hold ourselves accountable for our results as an agency.

DEDICATION: We are dedicated to our Mission, Vision & Values to better serve you, our customer, and your needs.

UNDERSTANDING: We will approach each and every person’s situation as if it were our own.

SERVICE: We will give our hands and heart to serve others knowing it will impact current and future generations.

KNOWLEDGE: We will continue to seek knowledge in order to further educate ourselves and those we serve.

We provide a variety of services, in partnership with community resources, to improve lives and empower people in the Concho Valley area

Concho Valley Community Action Agency
Executive Director's Report
Wednesday, April 10, 2019

FOUR QUESTIONS OF ENGAGEMENT

1. Does it align with our mission?
2. Is it a need of the community?
3. Do we have the capacity?
4. Is it cost effective?

CEAP

The 2019 CEAP contract was issued at \$1,775,907.

We have recently hired an additional utility assistance case worker to assist with mail-in applications.

Utility Assistance - March 2019

County	Households in Poverty	Households	Individuals	Monthly Expenditures	Monthly Average /HH	YTD Expenditures	% of total households in poverty in area	% total year expenditures
Coke	265	3	4	\$640.21	\$213.40	\$1,446.58	3.42%	1.60%
Concho	122	10	16	\$2,139.33	\$213.93	\$2,696.00	1.57%	2.97%
Crockett	377	3	3	\$184.57	\$61.52	\$890.78	4.86%	0.98%
Irion	74	1	1	\$104.54	\$104.54	\$297.27	0.95%	0.33%
Kimble	404	4	8	\$955.06	\$238.77	\$1,563.59	5.21%	1.72%
Menard	171	12	18	\$2,566.18	\$213.85	\$5,455.91	2.21%	6.02%
Reagan	163	2	3	\$308.13	\$154.07	\$308.13	2.10%	0.34%
Schleicher	169	3	5	\$406.57	\$135.52	\$523.06	2.18%	0.58%
Sterling	40			\$0.00	\$0.00	\$0.00	0.52%	0.00%
Sutton	138	6	9	\$549.78	\$91.63	\$3,849.37	1.78%	4.25%
Tom Green	5831	137	251	\$33,623.89	\$245.43	\$73,628.38	75.20%	81.21%
Total	7754	181	318	\$41,478.26	\$229.16	\$90,659.07	100.00%	100.00%

WEATHERIZATION

The 2019 LIHEAP WAP contract was issued at \$450,248.

Weatherization eligibility is capped at 200% of the Federal Poverty Rate. See attached scale.

We provide a variety of services, in partnership with community resources, to improve lives and empower people in the Concho Valley area

Month	Units	Counties
January	6	Concho, Schleicher, Coleman, Runnels
February	3	Tom Green, Kimble
March	3	Tom Green
April		
May		
June		
July		
August		
September		
October		
November		
December		

CSBG

CSBG Case Management eligibility is capped at 125% of the Federal Poverty Guideline. See attached scale.

We started the year with 32 individuals (11 families) on Case Management (Transition Out of Poverty Program). We are tracking 1 family of 3 at this time.

Management is working on a plan to shift administration allocations so that we are able to spend more direct service funds. Direct services may include rent, transportation, food, child care, and educational expenses.

We received a supplemental CSBG grant that we will use for educational expenses (tuition and books).

UPDATE (April): We are now at full capacity (12 families) in our Case Management program. We are currently tracking 3 families (10 persons total).

VITA

We will began processing and filing federal tax returns on February 4. This is a free, IRS sponsored and monitored service. This is our only program that is not income based. UPDATE (April): As of 4/8, we have filed 1450 accepted returns.

FUND RAISING

San Angelo Gives will be Tuesday, May 7. Please consider contributing to CVCAA during this 24 hour event. All gifts are amplified through the San Angelo Area Foundation

ORGANIZATIONAL STANDARDS

We provide a variety of services, in partnership with community resources, to improve lives and empower people in the Concho Valley area

Executive Director is compiling documents for 2019 Organizational Standard uploads. Although uploads are due by September 30, ED hopes to complete uploads by June 30.

DIRECTOR ACTIVITIES

2/21. Director visited Austin during legislative session in order to inform representatives about services CVCAA provides in the Concho Valley. Director met with Senator Perry and members of Representatives Darby and Murr's offices.

2/26. Director attended Tom Green County Commissioners' Court to inform members about services. Director hopes to attend all 11 Commissioners' Courts in the CVCAA Service Delivery Area. This may prove difficult due to the fact that many rural courts meet on the same day of the month.

2/28. Director attended the Hunger Initiative conference sponsored by Baylor University.

3/5. Director attended San Angelo City Council meeting.

3/10. Director interviewed on Foster Communications radio stations.

Initiated a conversation with Mary Hebert of Texas Hunger Initiatives concerning a possible collaboration in regards to a mobile food pantry.

3/21. Attending ribbon cutting of CV Food Bank.

3/27. Attended conference on human trafficking.

4/1-5. Per CVCAA Financial Policies, Director was out of the office at least 5 consecutive work days.

4/0. Attended Irion County Commissioners' Court.

STRATEGIC PLAN

During the first quarter of 2019, TDHCA will put out guidance on formulating and acceptable Strategic Plan.

Strategic Priorities

- Establish low cost, branded office space
- Fully expend all grants
- Implement effective marketing strategy
- Secure adequate, qualified weatherization applications
- Maintain equitable distribution of services
- Implement new management information system for weatherization assistance program
- Foster a climate of innovation

We provide a variety of services, in partnership with community resources, to improve lives and empower people in the Concho Valley area

Federal Poverty Rate effective 2/4/2019

Persons in Household	100% of Federal Poverty	125% of Federal Poverty	150% Federal Poverty	200% Federal Poverty
1	\$12,490	\$15,613	\$18,735	\$24,980
2	\$16,910	\$21,138	\$25,365	\$33,820
3	\$21,330	\$26,663	\$31,995	\$42,660
4	\$25,750	\$32,188	\$38,625	\$51,500
5	\$30,170	\$37,713	\$45,255	\$60,340
6	\$34,590	\$43,238	\$51,885	\$69,180
7	\$39,010	\$48,763	\$58,515	\$78,020

Utility Assistance max = 150%

Weatherization max = 200%

Case Management max = 125%