

LIFT Community Action Agency, Inc. 5086 5086

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 your organization employs a professional risk manager. Risk professionals bring invaluable expertise to the risk functions they lead. Unfortunately, sometimes a risk manager is perceived as 'the risk police,' or 'the director of no'.

Risk managers should be viewed as mission champions, and at NRMC we encourage these leaders to self-identify as 'risk champions.' To inspire this change in how the risk manager--and others--perceive the role, review the position description of the risk manager to ensure that this leader's goals include:

- uplifting the notion of 'risk' as something more dynamic than a threat--something that is worth consideration and investment
- cultivating a culture of inquiry and candor among team members who must be willing to openly discuss and deconstruct risks
- driving 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
- instilling 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*](#).

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 not necessarily confident that the organization is in compliance with federal, state and local regulations. Every organization board should operate with a high level of confidence with respect to the organization's legal compliance. When this confidence is lacking, immediate steps should be taken to ensure compliance and share these action steps with the board. Organization's 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. Most small organizations require outside assistance to monitor and ensure compliance.

The board's legal duty of obedience requires that a board act in accordance with the organization's mission and all applicable laws and regulations. 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 with the organization's success. This means asking questions about legal compliance from time to time.

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 do not necessarily reflect dissenting views and votes on specific issues. Maintaining detailed records of the board's actions is one way to minimize the chance of a claim alleging malfeasance by the board.

We urge you to consider the following suggestions with respect to minute taking and documentation:

1. If possible, have a non-board member take notes during the meeting and prepare the minutes. Many nonprofit Bylaws indicate that the board Secretary is responsible for preparing minutes. However, with the exception of an all-volunteer organization, when the Secretary takes notes s/he may be unable to fully participate in board discussion.
2. Create a draft outline of the minutes before each board meeting. The outline should contain key sections, discussion topics, and expected attendees. Fill in as much as possible before the meeting, to simplify the process for the minute-taker.
3. The minutes should include:
 - A list, by name, of who attended the meeting. If someone joins or leaves a meeting while it's ongoing, they should be listed as an attendee.
 - A copy of the agenda and any other material that the board members received either before or during the meeting.
 - A brief summary of the discussion of major topics. The summary should reflect key points considered by the board, and if relevant, references to opposing or divergent views. (For

example, "although there was consensus to proceed with the sale of the property, two board members, Mary and Bob, express strong concerns about the likelihood of selling the property without first completing renovations.")

- The proper wording of any motions or resolutions.
 - A record of the vote on all items approved or rejected by the board, including the number of "ayes" and "nays" and the names of members that voted in the minority.
 - A summary of specific items requiring further action by board members or staff.
 - The time the meeting began and the time the meeting adjourned.
4. Document the declaration of any conflicts by a board member and indicate how the board handled the situation (e.g., the person left the room during the discussion and vote).

Additional questions about the process should be addressed to your legal counsel.

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 NRMCM'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 NRMCM 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 NRMCM 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 periodically assesses its own performance. This is an excellent practice that we encourage you to continue. Through a self-assessment exercise, an organization 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 performance.

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

You indicated that your agency rents space to others. Most property owners and landlords appreciate fully the risks and potential liabilities that exist when they operate campgrounds, conference centers, and other facilities open to the public on their property. These same owners and landlords, however, often fail to understand that these risks and potential liabilities still exist when they rent or loan their premises to outside groups.

As an owner or landlord, your agency owes a general duty of care to visitors to your sites, whether they are guests, campers, or outside rental group members. These persons enjoy the legal status of invitee. An owner must use ordinary care to maintain the premises in a reasonably safe condition for invitees. The duty of ordinary care requires an owner to look for unsafe or dangerous conditions on the premises and either remedy the problem or issue an appropriate warning. This duty attaches to both regular invitees and outside rental groups, unless specific affirmative steps are taken to limit that duty.

Limit Liability - There are a number of ways that an agency owner/landlord can limit its liability when dealing with rental groups. First, many states have “Recreational Use” statutes that limit a landlord’s liability for any injuries that may arise if rental groups aren’t charged for use of the property. Check with your legal counsel to see if your state has a “Recreational Use” statute and if it would apply to your situation.

Agreement - An agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the group [borrowing the premises]. 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 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 group member strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the borrower 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.

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/osha3088.pdf

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.

ADA Compliance

You indicated that your agency's facilities may not be compliant with the Americans with Disabilities Act. Adhering to this law protects you from legal claims under the ADA and makes it easier for your agency to service and employ folks with mental or physical challenges. For more specific information about various aspects of the ADA and how it might apply to your organization and / or facility, visit the [ADA Question and Answer](#) page.

Building Codes and Licensing Compliance

You indicated that a facilities team 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 ensure that the team is monitoring these three areas:

- building codes,
- licensing
- 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. If necessary, the facilities team may need to coordinate this monitoring with other parts of the organization (e.g., if licensing for various services is handled by another business function).

Landscaping

You indicated that there is there untrimmed or tall greenery at edge of the property where people can hide. This is a liability. The agency should keep shrubs, hedges and plants trimmed below 3 feet. Tree branches lower than 6 feet should be removed.

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 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. Multiple locations increase the likelihood that an employee will not be notified in a timely fashion of a new or changed policy. Therefore, it is very important that you commit to developing standardized, written employment policies and identify the most effective methods for ensuring that everyone in the organization receives 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 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

Nonprofit boards have an important role to play in establishing appropriate employment policies and ensuring that an organization follows its policies.

The board must recognize that the policies included in an Employee Handbook or Personnel Policy Manual - as well as those found in other documents, such as employment letters, and those policies which emerge from practice - not only impose responsibilities or requirements on the employee (such as coming to work on time), but also create promises that the employer must honor and a court may enforce.

In most instances, a nonprofit board should avoid involvement in the day-to-day activities of personnel management - hiring (other than the executive director), promotions, discipline (except when the board has a defined role in a grievance process), and terminations. Overall, the board's main concern is the adoption and implementation of personnel policies and practices of the nonprofit, not its daily personnel actions.

Every board should be confident that the agency's 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 raise any concerns about special or preferential treatment with the chief executive officer.

For instance, did a manager terminate an entry-level employee for an infraction that he or she would have forgiven in a long-time staff member? This scenario raises the issue that every board should understand the nonprofit's policies concerning termination. Is "gross misconduct" - conduct for which an employee may be subject to immediate dismissal -- specified in the handbook? Is it clear in the handbook that certain policy violations (such as bringing a weapon to work) constitute grounds for immediate dismissal? The board should be informed and educated on these issues to ensure it fulfills its legal responsibilities. This does not mean that the board should review or question every employment action. Board members should, however, raise questions and seek clarification whenever they have reason to believe that the organization's employment policies are not in compliance with legal requirements or have not been followed.

Because termination of an employee raises considerable risk to the nonprofit, the board should know what the nonprofit's procedures are for termination and have total confidence that these procedures are adhered to.

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 within the last 1-3 years. It is possible that some material in the Handbook may be out-of-date or inconsistent with new federal, state or local employment laws. We advise that you seek legal review as soon as possible to ensure that your written policies are up-to-date.

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.

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 do not currently have a Workplace Privacy Policy.

The Fourth Amendment of the United States Constitution makes it illegal to subject an individual or his property to an "unreasonable search or seizure." Therefore, searching a staff member's desk, videotaping staff in action with clients, listening to an employee's voice mail, accessing computer files or requiring an employee to take a drug test under some circumstances, can rise to the level of a constitutional violation. However, you may conduct monitoring activities with impunity if supported by clear written policy, or if you obtain the staff's consent.

An employee might easily have the impression that his computer files, telephone messages, work area, and desk drawers are "private." Consequently, you should reduce any expectation of privacy in such areas through a written policy that reminds staff that work areas, including desks, computers, software, and the contents of filing cabinets or storage closets, are not private but are the property of the nonprofit. Another way to reduce expectations of privacy and maintain your option to search employee work areas, is to gain all employees' written consent to searches. If employees have provided written consent, and

been warned not to expect that their desks, work areas, computer files or voice mail are "private," courts are less likely to conclude that the employer's monitoring conduct was a violation of the employee's right to privacy.

We recommend that in collaboration with your employment attorney you develop a Workplace Privacy policy that, at a minimum:

- 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 or require 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

Employment applications are important risk management tools. We suggest that you review your current application to determine if it contains:

- an "at-will employment" disclaimer that expressly states that the applicant understands that employment with the nonprofit is on an at-will basis;
- a truth clause or false information warning;
- 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; and
- an authorization to check references (it is worthwhile to obtain permission from every applicant to check references, and it is required under the Fair Credit Reporting Act if your nonprofit uses a third-party agency to conduct reference checks).

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 do not necessarily complete reference checks on candidates before making a final job offer.

Reference checks are among the most valuable screening tools at your disposal. Many nonprofits shy away from checking references because they view the process as overly time consuming or one that yields little if any helpful information. The latter perception may be due to the growing trend to provide limited references (such as dates of employment and salary) or not to provide references at all. This practice is increasingly common in the nonprofit sector. It is unfortunate, however, since references from prior employers can provide valuable information on a candidate's experience and suitability for a key position. 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.

Pre-Employment Tests

Employers in the nonprofit, business and government sectors use a wide variety of pre-employment tests and background checks to obtain information about an applicant's suitability for particular positions. These screening tools are also used to verify factual information provided by an applicant.

The risks of these screening tools fall into two broad categories:

- inappropriate reliance on the information obtained through tests and background checks at the expense of more fundamental screening tools such as written applications, interviews and reference checks; and
- the inappropriate use or interpretation of test/background check results or the violation of an applicant's legal rights.

In the first category, the growing popularity of criminal history background checks as a screening tool for applicants in youth-serving organizations has led to the reliance on these checks as a barometer of suitability. Yet there is no question that these tests cannot be relied on to provide a "clean bill of health" for an applicant. Reliance on a "clean," state-based criminal history records check and discounting other screening tools is an unwise strategy.

In the second category of risk, many employers have rushed to use tests and background checks without first considering the legal limitations on the use of these screening tools or their appropriateness for a particular position. For example, it is unlikely that a credit check would be appropriate for the position of playground supervisor. Before using such tests and background checks, you must determine:

- what if any federal, state and local laws apply to restrict, limit or prohibit the use of these tools;
- whether the potential benefits outweigh the negative affect of the use of tests (for example, one negative effect might be that the use of background checks discourages applicants from a particular group);
- whether the proposed tests or checks offer truly reliable, job-related information;
- how the test/background check results will be evaluated. For example, will certain scores or findings disqualify an applicant? The failure to identify the criteria that will be used to evaluate results in advance increases the likelihood that the process will be a waste of precious resources;
- whether the proposed tests or background checks are clearly job-related and necessary to the thorough screening of applicants for a particular position.

Remember that few, if any tests or background checks are appropriate for every position in an organization.

Using a Hiring Checklist

The reason why a hiring checklist is so important is to ensure that every candidate is subjected to the same level of scrutiny during the screening process. This not only helps guard against charges of discrimination, but provides a procedure so that elements of the screening process do not fall through the cracks. For example, after investigating an allegation of client abuse, a nonprofit discovers that the one employee for whom the nonprofit failed to get a criminal records check had a history of criminal abuse. Hiring checklists help allow the nonprofit to see at a glance if one step in the process has not been completed.

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."

Rejecting Applicants

All applicants who are considered by your organization but not hired, should be informed of the reason for the rejection. Being truthful is a fundamental tenet of effective and legal employment practices. Applicants should never be given a false reason for rejection. This can lead to costly litigation. Make certain that your decision not to hire an individual is consistent with the reasons contained in your hiring records, and that the reasons and documentation are free from discriminatory bias.

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.

Goal-Setting Process

You indicated that your performance review process does not include a goal setting exercise whereby employees are required to develop a statement of goals for the coming year.

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In addition to the monitoring of day-to-day performance, every staff member expects and deserves a formal annual or six-month written evaluation that reflects the employee's achievements and acknowledges those achievements in the context of the organization's goals and objectives. The formal evaluation should include three steps:

1. a self-evaluation, completed by the employee, reflecting on whether the employee's performance in the past has fallen below, met, or exceeded expectations,
2. the supervisor's assessment of whether the employee's performance expectations fell below, met or exceeded expectations, and
3. a statement of goals for the employee's performance, jointly developed by the employee and his or her supervisor.

Performance appraisals that are primarily forward looking, rather than reflective, are most effective in motivating employees towards stronger performance.

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. The objective review is also an opportunity to evaluate how well supervisors are performing as job coaches. Remember that 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.

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 currently have a Progressive Discipline policy. Remember that 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 threatens another employee with physical violence.

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.

Keep in mind 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.

Terminating Employees "On the Spot"

Some nonprofit employers continue to terminate employees without notice, believing in their entitlement to do so under the law establishing the "employment-at-will" relationship. Persons who do this argue that keeping poor performers on board longer than necessary is a waste of time and other resources. While it is true that "employment-at-will" status affords the employer (or employee) the right to terminate the relationship at any time and for any reason save an illegal reason, terminating poor performers "on the spot" is risky for many reasons.

First, it undercuts the ability of an organization to substantiate the legal reasons for the termination and effectively defend the organization's employment practices. While an after the fact written record can be hastily assembled following an "on the spot" termination, the desire for expediency typically means that none will be. Then the organization faces a very difficult process of trying to piece together a record when and if the matter is litigated in the future.

Second, nonprofits must compete in the marketplace for employees along with public and private sector employers. An organization that routinely terminates employees on the spot will, over time, gain a reputation as an uncaring workplace. In this era of fierce competition for good people and unprecedented employee benefits, most nonprofits can ill afford to lose the advantage of good will and positive perception.

Do not continue the risky practice of terminating employees "on the spot" or "in the heat of the moment," with the exception of violations that constitute gross misconduct under your personnel policies.

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).

Improving Financial Reporting

You indicated that you provide financial statements on a monthly basis to your Finance Committee and Board, however you recognize that there are opportunities to improve how you tell your agency's story in financial terms, and to improve the board's engagement on fiscal matters.

Consider the following suggestions to strengthen your practices in these areas:

- Add key discussion questions to Finance Committee and Board agendas to make these presentations more engaging and interactive
- Propel Nonprofits offers a downloadable [Financial Self-Assessment](#) with helpful reminders and tips

- The Human Services Council has developed a "[Standards of Excellence in Nonprofit Financial Management](#)" resource which suggests key components of monthly reporting to senior/executive staff and key components of financial reporting to the Board and senior staff. For example:
 - Consider providing Monthly Executive Liquidity Reports with Key Financial (Performance) Indicators, Supporting Reports (e.g., cash flow projections, AP aging, AR aging) and Other Reports (budget-to-actual reports for the organization, and budget-to-actual reports for each program) to senior staff monthly
 - Consider providing Management Narrative/CEO Report, a Performance Dashboard, and Supporting Reports to the Board and senior staff no less than quarterly
- Strive to provide financial reports by 20 business days after the end of the prior month
- Strive to provide detailed reports to the Finance Committee 4-5 days prior to Finance Committee meetings

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.

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.

Investment Schedules

You indicated that schedules of investments showing all income received may not be prepared monthly or reviewed by a responsible person. This may be due to a backlog of accounting tasks, or a small staff that makes it difficult to assign these two tasks to different persons with financial training. We recommend that you make it a priority to catch up with any outstanding investment schedules and update these on a timely basis in the future. Furthermore, if there is no suitable internal person available to review the schedule prepared by a staff member or contractor, consider having a member of the board

review these schedules. Doing so may enable the organization to detect errors or transactions that are contrary to your investment policy before these issues escalate into a crisis for the organization.

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.

Indemnification

You indicated that you have not indemnified another party in a contract. When you avoid indemnifying another party you limit your organization's exposure to risk.

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.

Employment Contracts

You indicated that your agency has entered into an employment contract with one or more employees. As you know, an employee who is working under the terms of a contract is not an "at will" employee, because the contract spells out the notice required by both parties. Although employment contracts offer benefits and protections for employers--as well as employees, they also present risks. Always consult an employment attorney licensed in your state before finalizing any employment contract.

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.

Touching and Relationship Rules

You indicated that you do not have guidelines that prohibit touching clients in an area typically covered by a bathing suit, and also prohibit dating or engaging in romantic relationships with clients. Having clear guidelines that explain these expectations is preferable to assuming staff will use appropriate, consistent judgement. Unfortunately, some nonprofits have learned--after a complaint has been made--that some staff did not realize that their behaviors were prohibited, harmful or unwise. It is far better to address these issues up front than to run the risk of allowing staff members to use poor judgement.

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. You indicated that you have a

policy that instructs staff about how they should respond when a service recipient attempts to initiate inappropriate contact.

Consider reviewing your policy to make sure that it instructs the staff 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 has a policy that establishes a required minimum 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 and 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, organizations can lessen the level of frustrations that individuals may otherwise experience and thereby avoid violence. Use of an ombudsman to facilitate access to your organization's services and establishing grievance procedures to address staff members' concerns can help lower the level of frustration and thereby lessen the risk of 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.

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.

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 Leaders about Emergency Situations

You indicated that you do not require or provide instruction for leaders 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, the organization and its staff members should be prepared to respond when necessary.

Planning for activities sponsored by a nonprofit should always include the possibility that one of the participants will 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.

With multiple staff trained what to do in an emergency, your nonprofit will be in the strongest possible position to mobilize resources and respond with compassion and skill.

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.

Obtaining Emergency Medical Care

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. Congratulations on your policy of providing instructions to key personnel about obtaining emergency medical 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.

Guidelines Governing Access to Facilities and Clients

You indicated that your organization requires visitors to report to a central check-in point. 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.

Visitor Tags

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 to Control Access

You indicated that your organization employs physical barriers in order to control access to its facilities. Physical barriers can lessen the opportunity for unauthorized persons to gain access to your facilities and clients. 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.

Locking Unused Rooms

You answered that your organization does not have policies and procedures to ensure that areas that are not being used for service delivery are secured and locked. *Unused rooms, if left unlocked, offer opportunities for service recipients to enter the rooms, be isolated from others, and be victimized.* When the facilities used by your organization for service delivery have areas not used for your program, the areas should be kept locked. If your organization uses facilities not under its control, for example, a school gymnasium or a church meeting hall, when the arrangements are made to use these facilities, your organization should encourage the administrators of the facilities to take steps that would limit the access your service recipients would have to vacant classrooms and other spaces in the facilities.

Inspecting Facilities and Equipment

You responded that your organization requires 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.

Checklists

You indicated that your organization uses checklists for its inspections. Remember to keep your signed and dated checklists on file as documentation that scheduled inspections were performed.

Inspecting Equipment

You indicated that your organization requires regular safety inspections of your equipment. This is an excellent practice. Safety inspections ensure that equipment used by your organization is in safe operating condition and does not constitute a hazard when used for its intended purpose.

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.

Addressing Discipline and Control During the Screening Process

You indicated that the issues of discipline and control are not discussed with applicants during your selection and screening process. *When an organization works with vulnerable clients, it should explore the issue of how applicants would exercise control over clients.* Applicants also need to know the organization's guidelines for discipline and control. If the applicant appears to be unwilling -- or unable -- to adapt to the organization's guidelines for exercising control over service recipients, the organization would be well advised not to place the applicant in a position that requires supervising activities for service recipients.

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 Criminal History Record 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. State-level criminal history record checks will only reveal convictions for crimes that occurred in the state being checked. If you do not conduct a federal criminal history record check you may miss offenses committed in other states.

Verifying Required Credentials

When specific credentials -- degrees, licenses, or certificates -- are required for holding a position, your organization is wise to verify that applicants possess the applicable credentials. According to human resources experts, more than a third of all resumes contain material misstatements.

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.

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.

Direct Versus Vicarious Liability

Your organization's potential liability can be direct or vicarious. With direct liability, your organization may be responsible for the actions that caused harm to another. These allegations can include failure to screen, select, train, or supervise your drivers. Vicarious liability occurs when responsibility for the actions of your "agents" (drivers) is transferred to your nonprofit. Vicarious liability is the reason why your organization needs to be concerned about who is driving on its behalf - especially when they are driving their own vehicles. To be considered your "agent," 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.

The following section further explains the conditions needed for your organization to be deemed vicariously liable.

Organizational Authority

In order for a nonprofit to be vicariously liable for the actions of its drivers, the drivers must be acting on behalf of the organization and with its authority. Therefore, the driver must be an active part of your program and someone to whom you granted authority to drive on your behalf. Consider the following in determining if your personnel are operating with organizational authority. Did your organization:

- sanction or approve the activity?
- approve either the driver or the transportation activity (either actively or passively)?
- benefit from the approved transportation activities?
- have a formal driver selection and training program?

The issue of organizational authority is related closely to the organization's right to control its personnel and the scope of the person's duties.

Right to Control

The organization can also be liable if it had the right to control the driver, even if the organization never exercised its right of control. Consider the following questions when determining control. Did your organization:

- decide to undertake the activity?
- plan the scope and detail of the activity?
- ask the driver to participate?
- supervise driver performance and, if necessary, could it have reassigned the task to someone else?

Under some circumstances, a "yes" answer to any of these questions may prove to be sufficient evidence of the organization's right to control the driver.

Scope of Responsibility

Another factor in determining liability is whether or not the person causing the harm was acting within the scope of his or her duties. To determine the scope of the driver's responsibilities, consider:

- Was the activity consistent with your organization's mission?
- Was the activity a regular part of the organization's program?
- Did anyone within your organization authorize the trip?
- Was driving part of the person's position description?
- Was driving related, or incidental, to normal duties?
- Did your organization benefit from the trip?

A "yes" answer to any of these questions may prove to be sufficient evidence that the driver was acting within the scope of his or her duties.

Exposures for Rented, Hired and Borrowed Vehicles

You answered that your employees and/or volunteers rent, hire, or borrow vehicles to conduct your organization's business. These actions create the same exposures for your organization as your

employees and volunteers using their own vehicles on behalf of the organization. Your organization can be held vicariously liable for the actions of your employees and volunteers while driving or operating a rented, hired, or borrowed vehicle.

As with non-owned vehicles, the insurance coverage follows the car in that the vehicle owner's insurance policy will pay first. If the owner has no insurance or the limits are inadequate to cover a severe loss, your organization may be expected to pay the difference. Therefore, it is important to determine if the owner has insurance and for what limit. Many rental car companies insure their vehicles only to the level required by your state's financial responsibility law.

Aside from appropriate insurance, your organization should consider having certain policies and practices for the use of these types of vehicles and their drivers. These policies can be part of your policies concerning other non-owned vehicles (employees' and volunteers' vehicles).

Transportation Risk Management Statement

You indicated that your organization has a transportation risk management statement. This is an excellent practice. Too often organizations do not state clearly their purpose and goals in providing services to their constituents. If transportation is integral to fulfilling your organization's mission you should state your view on transportation safety and risk management. The most basic risk management statement is that safety is always first and the number one priority within the organization. A "safety first" philosophy simplifies the decision-making process by making it clear that safety is your top priority. Many decisions are easier to make when the first consideration is the effect on the well-being of the people serving and being served by the organization. Putting safety first enables people to make the right decision and not be influenced unduly by other pressures such as quotas or scheduling issues.

The statement can also incorporate your basic driver safety rules. The rules delineate the desired behavior. Suggested rules are to always wear seatbelts, lock car doors, 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 do not have a policy on the use of the organization's vehicles. The uncontrolled or unmonitored use of organization vehicles can create significant exposures for a nonprofit. Additionally, an organization should provide some guidance to its employees and volunteers regarding the use of their own vehicles for organizational business.

Consider including in your policy the following information:

- 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 no 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

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.

You indicated that you have a policy concerning passenger behavior. This is 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 taking action with respect to passengers who repeatedly violate the organization's rules, such as suspending future transportation privileges. Passengers should also be encouraged to report any observed unsafe driving practices to the appropriate personnel.

Accident Reporting Procedures

Consider reviewing your guidelines to make sure that they:

- 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.

Require an internal review following an accident to determine if the organization's policies and procedures were followed and if they were effective. Based upon the findings, revise any policies or procedures to more effectively respond to an automobile accident.

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.

Driver Screening

Screening all drivers makes good sense. Since you are already screening your drivers, you know how important this step can be. However, an effective screening and selection process needs to be quite thorough. 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 that doesn't require 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* - Collect basic personal information and questions regarding the person's driving status.

- *Personal Interviews* - Have 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* - Contact 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* - Look to your state guidelines for how to access DMV records.
- *Special Licenses or Certifications* - Certain sizes 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 Applications and Supplements

If a person is recruited as a driver or driving constitutes an important or major aspect of the person's position, a specific Driver Application should be used in conjunction with your organization's usual employment or volunteer application. When driving is not a major job function then you can either incorporate driving questions into your standard applications or use a supplemental application.

For positions requiring extensive driving, a Driver Application should request:

- Name
- Address
- Telephone Number
- Date of Birth
- Driver's License Number and State of Issue
- Emergency Contact Name and Telephone
- Current Employer (name and address)
- Position Held
- Dates of Employment

- Reason for Leaving
- Special Certificates: e.g., CPR, Medical Certificate, Defensive Driving, First Aid (indicate certificate(s) and expiration dates)
- Accident Record for the Past Five Years - Consider asking the applicants to list the dates of accidents, describe the nature of each accident (e.g. head-on, rear-end). Also indicate whether the applicant was found to be at fault, and if there were any fatalities or injuries.
- Traffic Violations for the Past Five Years - Moving violations only, but include any cases where the applicant received "probation before judgment." Request the city and state of each violation, date of the violation, and infraction and penalty.
- Have you ever been denied a license, a permit, or the privilege to operate a motor vehicle?
- Has any license, permit, or privilege ever been suspended or revoked?
- Personal Insurance - Do you have an insurance policy for your personal vehicle that meets or exceeds the limits required by state law? If yes, provide the name of your insurance carrier and your policy number.
- Agreement to Abide by the Nonprofit's Policies - The application should include a statement indicating that the applicant has read and agrees to abide by the nonprofit's policies, including its driving policies, will attend any courses or training required by the nonprofit, and will inform the nonprofit of any moving violations or at-fault accidents that occur during the applicant's tenure as a volunteer or staff member, whether or not they occur while working for the nonprofit.
- Seatbelt Warranty - Some nonprofits add language about seatbelt use as a warranty at the bottom of the application. For example, "I also understand it is the policy of [Nonprofit] that all passengers and drivers must at all times wear seatbelts when riding in an organization vehicle. I agree to abide by this policy and will not transport a passenger who refuses to fasten or have his or her seatbelt fastened unless he or she is excused from this requirement by a physician's certificate."
- Truth Clause - Just above the applicant's signature should be a truth clause or false information warning. While there are many reasons for rejecting an applicant for a position at your nonprofit, dishonesty on the application is among the most defensible reasons for rejection. Every nonprofit application for volunteer or paid employment should include a truth clause. A sample is provided below:

"I certify that the answers given by me to all questions on this application and any attachments are, to the best of my knowledge and belief, true and correct and that I have not knowingly withheld any pertinent facts or circumstances. I understand that any omission or misrepresentation of fact in this application or on my resume may result in refusal of or separation from employment/volunteer service upon discovery thereof."

- Applicant's Signature, Date

For those positions with only incidental driving, the driving supplement might include the following:

- Driver's License Number and State of Issue
- Personal Insurance - Do you have an insurance policy for your personal vehicle that meets or exceeds the limits required by state law? If yes, provide the name of your insurance carrier and your policy number.
- Special Certificates - e.g., CPR, Medical Certificate, Defensive Driving, First Aid. Indicate certificate(s) and expiration dates.
- Accident Record for the Past Five Years - Ask the applicant to list the dates of accidents, describe the nature of each accident (e.g. head-on, rear-end), indicate whether the applicant was found to be at fault, and indicate if there were fatalities or injuries.
- Traffic Violations for the Past Five Years (moving violations only, include even if received "probation before judgment") - Request the city and state of each violation, date of the violation,

and infraction and penalty.

- Agreement to Abide by the Nonprofit's Policies.

Verifying Licenses

By making certain that all authorized drivers of the organization's vehicles have current, valid drivers' licenses, you are performing a very simple, but important, task. Make sure that each driver is legally licensed to drive the type of vehicle to be used and that no license restrictions affect the person's ability to perform his or her duties. Always make a copy of the license for your files.

It is also a good practice to check for valid driver's licenses for all employees or volunteers that might drive occasionally for the organization. This includes employees and volunteers that use their own vehicles, not just the people driving the organization's vehicles.

You might also consider checking drivers' records through your state Department of Motor Vehicles. Some nonprofits require applicants for volunteer positions to produce a copy of their current Motor Vehicle Record (MVR), while other organizations obtain the applicant's permission to check their motor vehicle records and do so later.

MVR Checks

Driving records are maintained by the Department of Motor Vehicles (DMV) in each state to keep track of each person's traffic violations and vehicle accidents. Like other tools, however, you need to use the information gathered properly to achieve your desired results. Checking official agency records is *not* a panacea. *Do not be lulled into a false sense of security.* Conducting a motor vehicle record check is not a substitute for using other screening tools or risk reduction techniques such as closely supervising personnel (employees and volunteers) and monitoring their performance after placement. Moreover, conducting a record check should not lead you to disregard danger signs that appear during other parts of the screening process.

Here's a suggested approach for checking motor vehicle records:

Step 1 - *Determine if the position involves driving*

The decision to check official agency records - including motor vehicle records - should be based primarily upon the specific responsibilities of the position. If operating a motor vehicle is not part of the position description, then why check driving records?

Step 2 - *Decide if an MVR check is necessary*

Decide which positions require that each person's MVR needs to be checked. Consider checking the MVRs of persons authorized to drive your nonprofit's vehicles. Remember, it may still be a good idea to check a driver's MVR, even when they will be driving their own vehicle. If the position involves only incidental driving, then you may want to consider using a Statement of Driving History as a screening tool.

Some proponents of record checks assert that a check encourages self-screening. They believe that individuals with disqualifying records will be discouraged from applying for driving positions. Using official records as a screening tool may also strengthen your position in litigation. Although the organization is responsible if its driver is at fault (negligent) it can avoid possible allegations of gross negligence by showing that it took proper care in screening its drivers. An organization with access to these records may be subject to criticism if it fails to use it especially if the information is readily

accessible and affordable. Both of these reasons for using record checks may be valid. However, every nonprofit must balance its selection of screening tools against the factors of relevance to the position, availability, usefulness, cost, and legal permissibility.

Step 3 - *Establish criteria*

Before ordering motor vehicle records on applicants, you must first carefully define your selection criteria that will enable your organization to function while following its policies and procedures on a consistent basis. The selection process should identify traffic violations or accidents that will disqualify someone automatically, establish rating criteria, define judgment factors, and permit the information to be examined in the context of organizational requirements and other life experience factors of the applicants.

For example, what motor vehicle offenses would automatically disqualify an applicant? Would an applicant with a recent moving violation be automatically disqualified? Would an applicant with a moving violation five years ago be disqualified automatically? What was the nature of the moving violation - speeding, running a stop sign or red light or driving under the influence? We suggest starting with a list of offenses that would automatically disqualify any applicant, e.g. any arrest or conviction for driving under the influence or driving while intoxicated, vehicular manslaughter, or reckless driving. Then develop more specific criteria: e.g. two moving violations in the past 5 years, for disqualifying an applicant.

Step 4 - *Obtain MVR checks on all applicants for designated positions*

If you decide that MVR checks are necessary for specific positions, you should obtain motor vehicle records for all candidates for those positions. Consistency is a key issue in any effective screening and selection process. The failure to conduct record checks on all candidates for a position may be viewed as discriminatory. In addition, it may be hard to explain if your organization placed a person not screened in accordance with your policies in such a position and that person caused an injury or perpetrated a crime.

Step 5 - *Provide applicants with disqualifying offenses an opportunity to respond*

Unfortunately, states can make errors in recording traffic violations. It is a good risk management practice to allow applicants with disqualifying offenses to confirm if the information is correct. If the information is incorrect, the applicant should have the opportunity to "correct the record."

At a minimum, all of your drivers should have an acceptable driving record as defined by your organization. Your insurance company and agent or broker can assist you in establishing effective guidelines. Remember that checking motor vehicle records must be an on-going process. Depending upon the extent of driving exposure, the MVRs can be reviewed annually. Also, be prepared to take the appropriate action if a volunteer or employee develops an unacceptable driving record while working or volunteering for your organization.

NOTE: Under Federal law anyone driving a vehicle that holds sixteen or more people (fifteen passengers and the driver), such as vans or buses, must have a valid Commercial Driver's License (CDL). The law also requires the driver of any vehicle over 26,000 pounds to have a Commercial Driver's License. Many states have adopted more stringent requirements for Commercial Driver's Licenses. For example, California requires that anyone driving a vehicle holding ten (10) passengers, including the driver, have a Commercial Driver's License (Class "B" License). Check with your state Department of Motor Vehicles or your insurance agent to determine your state's requirements.

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.

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 indicated that you do evaluate your drivers. This is an important practice that we encourage you to continue. Consider reviewing your process for drivers of agency vehicles to include the applicable following elements:

- Periodic review of each driver's motor vehicle record
- Periodic road test
- Confirmation of medical condition if applicable
- Written driver safety tests
- Review of accident and incident reports
- Regular performance reviews and conferences
- Review of complaint logs
- Review of transportation program logs and reports (inspections, maintenance reports, trip logs, etc.)
- Verification of position requirements - current and valid driver's license, certificates or special licenses, and personal automobile insurance

Commercial Driver's License Issues

Under federal law, the drivers of vehicles holding 16 or more passengers (including the driver) or weighing more than 26,000 pounds must have a Commercial Driver's License (CDL). Aside from the need for a CDL, your organization is subject to numerous Federal and state regulations. 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. For additional information on the regulatory 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 maintain trip logs for your vehicles. These logs can assist you in evaluating the need for and effectiveness of the various vehicles your organization owns. The logs also can reinforce to personnel that they are driving an agency owned vehicle and that their actions have a direct effect on the organization.

Inspections

You indicated that your nonprofit requires pre- and post-trip inspections of your vehicles. Some auto accidents are due to mechanical problems and poorly maintained vehicles. Spending a few minutes inspecting a vehicle before and after a trip can save time, money and energy later.

Documenting Vehicle Maintenance

Ensuring proper maintenance and repairs is one of the primary reasons for the pre- and post-trip inspections. However, if a driver does not know how to inspect or how to report problems, the inspection procedures are meaningless. You indicated that your organization has established procedures including documentation for routine and special maintenance. This indicates that you recognize the critical connection between safe equipment and a safe transportation program.

Controlling the Non-Owned Auto Exposure

You indicated that your organization does not have an approval process for hiring, renting or borrowing vehicles. An approval process enables your organization to maintain control over its transportation exposures. The process does not have to create a bureaucracy or impose undue burdens on personnel. However, your staff should have some guidance on your policy for renting, hiring and borrowing vehicles. An effective policy can include the following:

- *Authorization* - Identify those positions that have the authority to rent, hire or borrow a vehicle and how other employees or volunteers can receive approval.
- *Acceptable Activities* - List the types of activities or reasons that are acceptable for renting or borrowing a vehicle.
- *Authorized Drivers* - The section should follow your acceptable driver policy. No one that has not been approved to drive either your vehicles or on your behalf should be allowed to drive a rented, hired or borrowed vehicle.
- *Acceptable Vehicles* - List the types of vehicles that can be rented or borrowed. Consider your organization's insurance coverage, especially for physical damage to rented or borrowed vehicles. In some cases it may be prudent to purchase the collision damage coverage, while in other cases this coverage may not be needed.
- *Cost Limitations or Factors* - Provide guidance on the price range for rental vehicles. Some organizations have special arrangements with specific rental car firms and require that personnel use these companies.
- *Vehicle Inspections* - Your personnel should be instructed to conduct pre- and post-trip inspections of a rented, hired or borrowed vehicle. They should report any noted physical damage or other problems to the vehicle's owner prior to operating the vehicle. The post-trip inspection

can verify that the vehicle suffered no damage when being used by your organization. Use the same inspection process if your organization loans vehicles to others.

- *Borrowed Vehicles' Insurance* - Establish a process for verifying that the owner of the borrowed vehicle has adequate auto insurance (liability and physical damage).
- *Your Insurance* - The policy should briefly explain your organization's insurance coverage (if any) for rented, hired, or borrowed vehicles. Your coverage may consist of Hired and Non-owned Auto coverage for the liability exposures and Hired Auto Physical Damage. Your nonprofit can purchase both of these coverages, whether or not you own any vehicles. Also explain any requirements that your insurance company has imposed before you rent or borrow a vehicle.

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 do not require proof of personal auto insurance from personnel who drive their own vehicles for your organization's benefit. Requiring proof of coverage is an excellent risk management strategy 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 or the limits are very low, the responsibility for the financial consequences of the accident could be shifted to your organization. Therefore, your organization can protect itself by requiring your drivers to provide proof of personal auto insurance.

A related question is: what policy limits are appropriate for personnel using their own vehicles for the agency's business? Many organizations require that each driver have the limits required to meet the state's financial responsibility law.

Some organizations require liability limits higher than the state minimum. Your agency should evaluate its needs and resources to determine what personal auto liability limit it will require of its drivers. 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 coverage 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.

Data Classification Policy

You indicated that your agency does not have a data classification policy. A data classification policy clarifies which types of documents or data sets are public, internal/business only, or confidential. Understanding how the agency classifies data is an important step to complying with your agency's policies regarding the storage and protection of confidential information. We recommend that you consider developing a data classification policy. A template policy is available in *My Risk Management Policies*.

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.

Data Privacy Practices

You indicated that your agency uses sensitive data, but needs to learn more about data privacy practices and laws. The starting point for understanding a nonprofit's duty to protect data is to understand *what constitutes personally identifiable information (PII) under the law*. Personally Identifiable Information (PII) is any data that could be used to identify a specific individual.

Did you know that information found in a telephone book is not protected under the law? Much personal information can be easily gathered from public records such as telephone books and websites. Some publicly available information is considered PII.

PII can be sensitive or non-sensitive. Non-sensitive PII could include information such as a business telephone number, which could identify an individual, but likely won't cause any harm to the individual because the information is already publicly available on the business's website. Conversely, sensitive PII is information that identifies the individual and that—if disclosed—could harm the individual whose privacy was breached. Sensitive PII includes:

- Unique identifiers (e.g., Social Security number, passport number, driver's license number, biometric data such as a fingerprint or retina scan, etc.);
- Protected Health Information (PHI), which is any information protected under U.S. law that identifies an individual and is maintained by a covered healthcare provider, health plan, or healthcare clearinghouse. This typically includes information that conveys an individual's health status, history of health care, or payment for health care (e.g., medical record numbers, health plan beneficiary numbers, genetic information, etc.); and,
- Financial information that a consumer provides to a financial institution, but that is not available publicly (e.g., credit card numbers, bank account numbers, etc.)

Non-sensitive PII records can sometimes be used in combination to identify a specific individual. Therefore, even non-sensitive PII possessed by a business might warrant protection.

Various federal and state privacy regulations require that organizations protect personally identifiable information (PII) no matter where it resides: on a network; on stand-alone systems or in databases; on remote devices such as laptops or employee-owned smartphones used for the nonprofit's business; and, of course, on paper. Data might need to be protected while in transit between various devices and networks.

Additionally, there are data protection standards for specific industries or specific business practices, such as the PHI privacy standards mentioned above, and the PCI Security Standards Council's Payment Card Industry Data Security Standard. This standard requires organizations to enact information security best-practices if they handle major credit cards.

According to the National Conference of State Legislatures (NCSL), 47 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have enacted laws that require organizations to "notify individuals of security breaches of information involving personally identifiable information." NCSL also tracks proposed amendments to state security breach legislation. Most existing state laws encompass five key components:

1. Who must comply with the law;
2. What constitutes "personal information;"
3. What constitutes a data breach (e.g., unauthorized acquisition of data);
4. Requirements for notifying affected individuals in the wake of a data breach (e.g., timing or method of notice, who must be notified); and,
5. Exemptions to the law (the most common exemption is for encrypted information).

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.

Hosting Special Events

You indicated that your nonprofit hosts special events. Special events are increasingly popular in the nonprofit sector as organizations look for ways to generate support for programs, raise funds for educational and service delivery initiatives, and raise public awareness about societal problems and issues. For many nonprofits special events are a cornerstone of program and service delivery. While special events can help an organization achieve its goals, they may be undertaken with little thought about the potential downsides or risks. Effective nonprofits cannot operate without risk, nor should they try to do so. However, a critical component of any special event is to identify and manage the risks related to the specific activity.

Documenting Risk Management Activities

You indicated that your nonprofit does not document its risk management and safety plans for special events. Proper analysis and documentation are good business practices. Written plans can assist with training and supervising personnel as well as help ensure that certain actions are taken. The documentation can also be useful if an accident occurs and your nonprofit must defend its actions. We recommend that you begin documenting risk management activities for your special events as soon as possible.

Use of a Safety Officer

You indicated that your nonprofit does not appoint a "safety officer" for each special event. The role of "safety officer" can be added to someone's position description - it does not have to be an additional position. However, it is important for risk management oversight to be assigned specifically to one person although safety is everyone's responsibility. Your organization should empower the "safety officer" to act as needed to safeguard the event, the organization, the participants, and others. Incorporate the risk management responsibilities in the person's position description and provide the training and resources needed to manage these risks effectively.

Partnership Risks

You answered that your organization establishes partnerships or collaborations with other nonprofits, businesses, and governmental agencies for special events. Establishing a partnership has its own set of risks that you need to manage before, during, and after you begin the relationship. The first issue is selecting the right partner. This can be accomplished through appropriate research and due diligence. An improper relationship in the eyes of the public can have a devastating public relations effect on your organization. Additionally, the roles and responsibilities of each party must be clear and understood by both parties. Many organizations formalize their relationships with contracts or memoranda of understanding.

Recruitment/Selection Process

You indicated that your nonprofit does not have a process for recruiting and selecting partners. Recruiting and selecting partners can be a treacherous endeavor. Your partners and sponsors should reflect your nonprofit's values and mission while the arrangement makes good business sense for all parties. One substantial collaborative risk is the public's reaction to the disclosure of inappropriate actions by one of your partners. The partner may use foreign "sweatshops," manufacture a dangerous product, or distribute a product that you do not want affiliated with your nonprofit (alcohol, guns, cigarettes, etc.). The public's perception of your organization can be influenced by adverse publicity affecting your partner, whether a business or another nonprofit. Choose your partners and sponsors wisely.

Written Agreements

You answered that you do not document your collaborative relations and vendor relationships before the project begins. When each party understands and accepts its responsibilities, the relationship tends to go much more smoothly and misunderstandings are often avoided. At a minimum, your written agreements should include who, what, where, when, why and how for all parties. As with any contract, have your legal counsel and insurance professional review the agreement before you sign it.

Selecting Appropriate Facilities

You indicated that your organization does not use a *Facilities Selection Checklist* when evaluating the possible locations for a special event. A Facilities Checklist is a valuable risk management and planning tool that enables you to identify and evaluate the features needed to hold a successful and safe special event at that facility. Some items that you may want to consider in selecting a facility are listed below. You may need to add specific criteria depending upon your organization's requirements and the nature of the event.

- Are the premises adequately maintained?
- Is the facility appropriate for the intended/designated use (size, equipment, accessibility)?
- Is the facility accessible for people with disabilities?
- Does the location have adequate restroom facilities?
- Are there any special hazards on or next to the premises?
- Is there proper lighting - inside and outside?
- Does the facility have adequate seating?
- Are there a sufficient number of well-marked exits?
- Can adequate security be provided at the facility?
- For outdoor events:
 - Is there adequate shelter from sun, heat, cold, and other weather?
 - Does the terrain pose any special risks?
 - Is the property accessible for emergency vehicles?

Security

You answered that your nonprofit does not provide security services at its special events.

Security personnel can perform a number of valuable services at a large special event. They may be needed to keep unwanted people away from the event as well as deal with the people attending or participating in the special event. You need people trained to deal with an emergency situation such as medical needs, or a fire or other event that requires the facilities to be evacuated. However, security measures have their risks, too. The key to an effective security force is the selection, training and supervision of the security personnel, whether they are independent contractors or volunteers. If your organization does not want to assume the responsibility for providing volunteer security personnel, you should contract with a security firm. When using independent contractors, ensure that the contract requires the contractor to have insurance and to provide a Certificate of Insurance to your organization. Also, have your organization added as an additional insured to the security firm's general liability policy.

"Day of" Volunteers

You indicated that your nonprofit uses "day of" or one-time volunteers for some of your special events. The proper training and supervision of "day of" volunteers is one of the greatest risk management challenges facing a nonprofit that sponsors special events. A poorly trained and supervised volunteer can create significant harm for the organization. The volunteer may get hurt while working or harm someone else, and the organization may be held responsible for the volunteer's actions. While planning the event, identify the number of volunteers needed and the tasks to be performed. Modify your Volunteer Management program so that you still can screen or select your "day of" volunteers. You also need to develop creative ways to train these volunteers quickly and provide adequate supervision. It is easy to become overwhelmed by the large number of volunteers needed for some special events. However, with proper planning and training you can manage the risks associated with the use of one-time volunteers. One of the benefits of using "day of" volunteers is that some of the volunteers may become strong supporters and advocates for your organization.

Spectators

You indicated that you have special events that include spectators. Large events with a lot of spectators can be a challenge to your event organizers. Crowd control is the main concern with spectators. The organizers need to assess and design the flow of people into, throughout, and exiting the event. Road traffic and parking is another concern. Large crowds also require medical or first aid facilities plus the ability to evacuate people safely if needed.

Another challenge is to limit the spectators' access to event participants or their opportunity to interfere with the actual event. A concert with a very popular group or individual can create serious crowd control problems. Also, an event held on public streets or public property (e.g., bike ride, road race, or rally) presents challenges in limiting spectators' access and minimizing the chance for someone to get hurt.

Some special events may place the spectators in danger such as athletic competitions or amusement rides. Your organization can transfer some of the financial risk to the vendors that provide these services, but you still retain the risk of a public relations disaster if an accident occurs. Also, if your event includes the serving of alcoholic beverages, the organizers need to plan to limit consumption, avoid serving minors, and handle intoxicated people.

Waivers

Waivers and releases can be useful risk management tools. In many instances a waiver will hold up in court and insulate a nonprofit from liability. More importantly, however, waivers and releases warn the volunteer or participant about the special risks of an activity and alert the individual to use caution. Although it may not be necessary for all events, you should consider creating a waiver for specific activities. It is recommended that you have your attorney or legal counsel review the waiver before use.

Food and Beverages

You responded that food and beverages are furnished at your special events. The first risk management concern is who is providing and serving the food - a vendor or your employees and volunteers. If you are using vendors, you can transfer most of the financial risk associated with food to the vendor. However, if your organization is providing food and beverages there are few things to consider.

- *Facilities* - Does the premises have adequate preparation, storage, and refrigeration facilities for the type of food served?
- *Health Regulations* - Do you need a health department permit or are you subject to any other health department regulations?
- *Food Spoilage and Contamination* - Are the food handlers trained in the proper handling of the food to be served?

Entertainment

You indicated that your organization provides entertainment during some of your special events. Entertainment is a broad term and can include street performers (juggler, clown, mime, etc.), musicians, speakers, athletic events (rodeo, boxing, tennis, etc.), dances, games, and amusement rides. Each type of entertainment may have unique risks that you need to manage. The most significant exposures are bodily injury and damage to property.

Entertainment involving "name" personalities can place extraordinary stress on security and crowd control. The entertainment may also require stages with elaborate (and expensive) sound and light systems and special effects. Stages and bleachers can be extremely hazardous if not properly constructed and maintained.

The financial aspects of many entertainment risks can be transferred to another party. At a minimum, you should require that each entertainer provide you with proof of insurance. However, be aware that many entertainers (bands, street performers, etc.) do not have insurance. Without insurance, the financial consequences for any losses caused by these performers can become the responsibility of your organization. You can decide to assume that risk, or, for a larger event, you may be able to make arrangements for the entertainers to purchase a special event liability policy.

Require a certificate of insurance from each performer, vendor and contractor involved with the special event. Also, ask to have your organization added as an additional insured to their general liability policy. Ideally, each entity should also have workers' compensation insurance. However, many states do not require sole proprietors to purchase workers' compensation coverage.

Parking

You responded that your organization offers parking at your special events. The risks associated with event parking depend upon who is running the parking operation. Often the parking lots are a part of the facility you are using and facility personnel handle the parking for the event. If this is the case, you have transferred the risk to the facility; however, review carefully the rental contract to ensure that the facility

is responsible for all aspects of the parking operation. If your organization is responsible for operating the parking lot, be careful to whom you assign those tasks. You should train and supervise the parking aides and provide them with the appropriate safety equipment (reflective vests, flashlights, whistles, and radios). Consider posting notices and disclaimers that your organization is not responsible for any damage or loss of property while on the parking lots. If the event is at night or in a dangerous neighborhood, consider hiring a security firm to patrol the lot and assist your guests as needed.

Check the parking lots for smooth, even surfaces and mark any hazardous conditions. Often guests are parking in fields and other unpaved surfaces so be aware of the hazards of uneven surfaces and the possible consequences of inclement weather on the parking area. Also, consider the traffic flow and work with the local law enforcement agencies to minimize disruptions to traffic.

Transportation

You indicated that you provide transportation services as a part of your special events. One form of transportation service can be a shuttle service between the location and another, such as from the parking lots, airport, hotel, or from venue to venue. Another type of service is transporting people for the event such as a bus trip to a resort area or camp, or a tour to another city or country. There are two risk management strategies for this transportation risk: transfer the risk to another entity or provide appropriate vehicles and suitable drivers.

If you choose to transfer the risk, you need to be diligent in selecting a transportation service provider. If you are chartering the service, request certificates of insurance. When your organization provides the transportation you should take additional precautions. Your transportation service may involve the use of cars, boats or airplanes. In all cases you need to know who is "driving" and whether they are acceptable "drivers." Also, and unless the drivers are using vehicles owned by your agency, confirm that they have the proper insurance. Finally, your organization should purchase insurance coverage for non-owned automobiles. In special circumstances when you may be using non-commercial watercraft and aircraft, make certain that you are properly insured for these special transportation activities.

Cash

You indicated that you do not handle a significant amount of cash, checks, or credit card receipts during your special events. However, you may be surprised how quickly the receipts can add up to a large sum of money. You may collect admission or registration fees, parking charges, or payments for the sale of merchandise, food and beverages. Other sources include auction receipts, pledges and donations, raffles or opportunity drawings, and the money from a casino night. The proper safeguarding of money, especially cash, is difficult and often overlooked when planning a special event. Some activities generate large sums of cash and checks that if lost or stolen can create a financial hardship for your organization.

The main exposure is that the funds are stolen either by an outsider or an employee, client, or volunteer. Here are some techniques for protecting your financial assets.

- *Segregate money handling duties* - A different person should be responsible for each step - receiving the funds, depositing, recording, disbursing funds, recording disbursements and reconciling your accounts. There is a significant chance for fraud if only one or two people handle all of these transactions. The more eyes overseeing the handling of your funds the better. Segregation of duties is difficult for many small nonprofits but can be accomplished with the use of employees and volunteers.
- *Safeguard undeposited receipts* - First, do not forget to stamp checks with a restrictive notice when they are first received. Make deposits frequently and safely. Vary the time of day and routes

taken to the bank. If the funds are not deposited on a particular day, take the necessary steps to store the money and checks safely, especially when you are away from your office.

- *Count twice, deposit once* - Money should be collected and counted independently by two people. Many organizations establish a guarded "money room" where all of the cash is taken and counted with several witnesses. Also, when handling cash, use either a cash register or other system for recording all cash transactions. The register tape or other receipts should then be reconciled with the amount of cash collected.

Accident Reporting Form

You answered that your nonprofit does not use a standard Accident or Incident Report form during its special events. In the event of an accident, it is important for your organization to gather information regarding the accident. The information collected will be critically important in any subsequent investigation of the accident. You can also use the information to learn from the incident and implement changes.

Contact your insurance professional for any recommended or required forms. Train your employees and key volunteers are the proper techniques for completing these forms. The documentation should only include an *objective description* of the accident and the injuries. The person completing the form should avoid personal opinions and any editorializing. Never admit liability to anyone and do not include an admission of liability in the report. Unless your insurance professional or carrier requires that you use a specific form, consider using a form that includes the following information:

- *General Information* - Your organization's name and address plus the name, date and location of the special event.
- *Injured Person(s)* - This section should identify the injured person(s) and provide basic information on the accident. Include the person's name, address, telephone number, age and gender. Note the date, time and location of the accident and a brief description of what happened. Describe the nature of the injury. Indicate how the injured person left the scene (e.g. on foot, in personal vehicle, in an ambulance)
- *Witnesses* - Record the name, address and telephone numbers of any witnesses. Ask each witness for a brief statement or description of the accident. The witnesses' statements should be recorded accurately, reviewed and signed.
- *Medical Treatment* - Note if any first aid treatment was administered and by whom. Many organizations have their medical volunteers complete this section of the report. Also document if any professional treatment was performed such as the person being transported to the local hospital.
- *Accident Documentation* - Describe how the accident/injury occurred. Draw a diagram of the accident scene. Many organizations take photographs or use a video camera to document the accident scene. These pictures and diagrams will be helpful in investigating and settling any claim made against your organization.
- *Preparer's Signature* - The person that prepared the form should sign and date the form and include his or her address and telephone number.

It's always a good idea to talk to your insurance professional before you're facing an accident to discuss how your insurance company wants you to report claims. Some insurance companies want you to report every incident so they at least have a file in the event the injured party submits a claim. Other insurers do not want a claims notification form until the injured party seeks compensation. Even if your insurance company does not want immediate notification of any incidents it is prudent for your nonprofit to establish and retain incident report files. After talking with your insurance professional, establish the appropriate accident reporting procedures.

Notifying Victims' Families

You answered that you do not have a procedure for notifying the family or caregiver of an injured person. This is an important task that should be done with great compassion. Depending upon the relationship of the person to your organization (employee, volunteer or client), you may have difficulty identifying the people to contact. In some cases you may have to rely on the local authorities to proceed. Whoever notifies the family-organization or the police-compassion is important while conveying your nonprofit's concern for the injured person and his or her family. This is especially true for any follow-up contact with the injured person or their family. While your representative should never make promises to compensate the victim or accept fault, you may avert legal action simply by demonstrating concern for the individual and their family.

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 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.

Emergency Notification

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 other less-official channels. Phone trees, text messaging, and internal email communication are all available channels to connect with your employees and volunteers in a crisis situation.

In addition, crisis events sometimes unfold over a longer duration. Plan in advance how you might use internal and external communication channels to communicate with your stakeholders about crisis management efforts and recovery.

Draft Communications

Having draft messages about common communications will assist in providing a rapid response in a crisis. Determine the most likely messages that will need to be shared, draft a general outline and leave room for quick modifications to be made for a specific situation. In general, focusing on the safety of everyone involved will take precedence in most emergency situations but making the connection to your mission is also key. Develop common talking points for all communications and use these guidelines:

- Stay mission-focused
- Be consistent
- Be careful with language and tone (show compassion & sincerity)
- Focus on the facts and avoid speculation (if you don't know, just say so)
- Accept responsibility
- Don't leave a vacuum

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.

Checking References

References are an invaluable screening tool. You should follow up with references provided by the volunteer applicant just as you would for a paid position in your organization. Although few people truly enjoy hunting down references and collecting reference information, it is a vital step in a comprehensive screening process that can help your nonprofit find the best volunteers avoid hiring unsuitable volunteers. Effective reference checking involves asking probing questions that will yield information you can use to determine an applicant's eligibility for service at your nonprofit. Here are some sample questions that could be asked of a person providing a reference for an applicant for a volunteer position:

- Could you describe an example of a service performed by the applicant while serving as a volunteer at your organization?
- Compared to other volunteers in similar roles, how would you rate the applicant?
- Is the applicant eligible to serve your nonprofit as a volunteer in the future? If not, can you explain why not?
- Would you utilize the applicant in the capacity for which they will be volunteering at our organization? If not, why not?
- To the best of your recollection, how did the applicant handle frustration and criticism while on the job?

You indicated that only exempt, salaried staff may also 'volunteer' at your nonprofit. Although there are no federal laws or regulations that prohibit a nonprofit from permitting or inviting exempt, salaried staff to also serve as 'volunteers,' an employer should never coerce or require its staff to volunteer, and any work that is substantially related to the staff member's primary role should not be described as volunteer service.

Volunteer Orientation

Orientation is an important part of the onboarding process for your volunteers. Inconsistent participation in your orientation can create gaps in your volunteers' knowledge of your organization and its procedures. Take steps to ensure that all of your volunteers take part in your orientation in your program.

In some cases, a volunteer may not be able to participate in orientation. If this is the case, you could use on-the-job training or other supervisory opportunities to cover the material that would normally be offered in the orientation session. Be sure to document that the volunteer has reviewed the material.

Volunteer Handbooks

You indicated that your nonprofit does not have a volunteer handbook. We recommend that you consider developing an employee handbook as a tool for sharing important information with your volunteers. Volunteer handbooks often include: a welcome letter, an overview of the nonprofit's mission and services, volunteer position descriptions, the volunteer code of conduct, and descriptions or

explanations of key policies and procedures.

A well-written and thorough volunteer handbook is a useful reference source when questions about the organization's policies and guidelines arise. We recommend that you consider developing a volunteer handbook.

Terminating Volunteers

Inconsistent use of an established termination procedure for volunteers can create risks during or after a volunteer's departure from your organization. Verify that your organization has a process for terminating volunteers and ensure that it is utilized in a consistent process each time a volunteer is let go.

Grievance Policy for Volunteers

Although you encourage volunteers to raise concerns, a lack of clarity of how to do so may in fact discourage volunteers from bringing their concerns to light. Establishing a grievance policy that outlines the process will encourage volunteers to raise issues they encounter. Identifying the proper channels for communication will ensure that the complaints are heard and addressed. In turn, this reinforces the feeling of value that a volunteer has from the organization.

Exit Interviews

By not conducting exit interviews with departing volunteers, you are missing a valuable opportunity to gain perspective on your operations and to have each volunteer leave with a positive impression of your organization. An exit interview is a direct and inexpensive way to discover information about your operations. Exit interviews are also an opportunity to express appreciation for a departing volunteer's service and unique contributions to your mission. We recommend that you put the same priority on conducting exit interviews as you would on collecting keys or equipment.

For an effective exit interview, consider:

Having a conversation - Take the time to sit down and talk to the volunteer. A conversation will provide greater detail than an exit survey alone and allows the interviewer to ask some clarifying questions.

Utilizing an exit interview form - Utilizing a form to frame the discussion will help with consistency across exit interviews, particularly if the same person does not conduct all of the interviews.

Following up - Collecting information without action is an empty activity. Even if the information from the exit interview is positive, it helps reinforce information key to providing the best possible experience for your volunteers.

Choosing appropriate questions - The questions you ask are the most important part of the interview. Consider some of these as a starting point for your interview:

- What did you like most about volunteering?
- What could have been better about your volunteer experience?
- What advice would you give to someone considering becoming a volunteer?
- Did you receive adequate training and support in your role as a volunteer? How can we do better?
- How would you suggest we improve the experience of future volunteers?

If an in-person or telephone exit interview isn't possible, consider using an online survey to share

information with the volunteer and request their feedback.

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.

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.

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 NRMCM 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

Family Development Program Risks

You indicated that your Family Development team hasn't identified the specific risks that arise in their area of responsibility or developed targeted risk management responses to those risks.

To remedy this situation:

- Before brainstorming risks the team should decide on a definition of "risk." There is no single way to define risks. Three types are common: cause, event or impact. For consistency's sake decide whether the team will focus on **causes** (e.g., client needs emergency help that can't be provided by CAA), **events** (e.g., volunteer loans client money to pay for food), or **impacts** (e.g., volunteer resigns after feeling pressured to continue providing funds to client).
- After identifying top risks arising from family development programs, rank the risks. The risks whose occurrence would be costly or otherwise impactful to the agency should be listed as priority risks.
- Brainstorm possible measures to either: (1) reduce the likelihood of the risk; (2) reduce the severity/cost of the risk; or (3) respond if the risk materializes.
- Select the strategies that the team believes are the best approaches to (1), (2), and (3) as long as those strategies are practical.
- Assign responsibility for each strategy (a staff lead for coordinating the activity), and indicate a timetable for completion (e.g., by December 31 we will update and re-distribute our policies about providing personal help to clients).
- Decide how often the team will revisit and update its list of risks and strategies.

Housing Program Risks

You indicated that your Housing program team hasn't identified the specific risks that arise in their area of responsibility or developed targeted risk management responses to those risks.

To remedy this situation:

- Add the topic of "identifying top risks" to an upcoming agenda of the Housing team.
- Before brainstorming risks the team should decide on a definition of "risk." There is no single way to define risks. Three types are common: cause, event or impact. For consistency's sake decide whether the team will focus on causes (e.g., non-custodial parent seeks access to child residing at domestic violence shelter), events (e.g., non-custodial parent locates shelter where child is residing and attempts to abduct child), or impacts (e.g., client sues CAA for failing to provide adequate protection for her child).
- After identifying top risks arising from family development programs, rank the risks. The risks whose occurrence would be costly or otherwise impactful to the agency should be listed as priority risks.
- Brainstorm possible measures to either: (1) reduce the likelihood of the risk; (2) reduce the severity/cost of the risk; or (3) respond if the risk materializes.
- Select the strategies that the team believes are the best approaches to (1), (2), and (3) as long as those strategies are practical.
- Assign responsibility for each strategy (a staff lead for coordinating the activity), and indicate a timetable for completion (e.g., by December 31 we will update our security policies intended to

keep the location of the shelter unpublished).

- Invite a manager or team outside the Housing programs area to review the team's risks and strategies and provide feedback.
- Decide how often the team will revisit and update its list of risks and strategies.

Training and Education Risks

You indicated that your Training & Education team hasn't identified the specific risks that arise in their area of responsibility or developed targeted risk management responses to those risks.

To remedy this situation:

- Before brainstorming risks the team should decide on a definition of "risk." There is no single way to define risks. Three types are common: cause, event or impact. For consistency's sake decide whether the team will focus on **causes** (e.g., client needs training that CAA is unable to provide), **events** (e.g., client trained by CAA obtains job under false pretenses), or **impacts** (e.g., CAA's name and reputation are tarnished among prospective employers of CAA trainees).
- After identifying top risks arising from training and development programs, rank the risks. The risks whose occurrence would be costly or otherwise impactful to the agency should be listed as priority risks.
- Brainstorm possible measures to either: (1) reduce the likelihood of the risk; (2) reduce the severity/cost of the risk; or (3) respond if the risk materializes.
- Select the strategies that the team believes are the best approaches to (1), (2), and (3) as long as those strategies are practical.
- Assign responsibility for each strategy (a staff lead for coordinating the activity), and indicate a timetable for completion (e.g., by December 31 we will update and re-distribute our policies).
- Decide how often the team will revisit and update its list of risks and strategies.

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