

II. BUDGET AND MANAGEMENT

Effective Date: April 21, 2008

A. BUDGET

The budget represents a proposed plan for raising and spending funds for specified programs, functions, activities, or objectives during a fiscal year. The annual budget should include the organization's total overall operating budget as well as separate operating budgets for specified programs, activities and grants. A non-profit organization's governing board should review and adopt an annual budget prior to the start of each fiscal year. This duly enacted budget authorizes and provides the basis for the control of financial operations during the year. To ensure effective budgetary control and accountability, the approved budget should be incorporated into the accounting and financial reporting systems.

The organization's proposed budget should be "balanced" in that projected revenues are equal to estimated expenses at all budgetary levels. However, if the organization has an undesignated fund balance amount which has accumulated from excess revenues in prior years, the board may use a combination of projected revenues and designated fund balance to balance the budget for a given year.

The governing board may amend the budget during the year due to changes in budget estimates, the receipt of new grant funds, etc. However, each and every change or amendment to the budget must be approved by the governing board and recorded in the official minutes. Also, it may be necessary to secure the approval of a particular funding agency if the amendment involves changes to the budget initially approved or awarded by the agency.

The governing board may decide to allow grantee management to make budget changes or amendments, within certain dollar limits, without securing prior board approval. However, if this practice is approved by the board, there should be a requirement that the budget changes are to be reported to the governing board at its next meeting, acted upon by the board, and entered into the official minutes.

B. FUND-RAISING ACTIVITIES

Activities undertaken by a non-profit corporation in order to raise funds to finance its operations may be subject to regulation under one or more state statutes. Prior to the commencement of a fund-raising plan, you and your attorney should examine Chapter 131F of the North Carolina General Statutes to determine whether they apply to your activities.

Solicitation of Contributions

The primary purpose of the Charitable Solicitations Act is to protect the general public and public charity from unlawful solicitation and to provide for the establishment of basic standards for the solicitation and use of charitable funds in North Carolina. Under North Carolina law, any

corporation or entity that solicits charitable contributions must apply for and obtain a license from the N.C. Department of the Secretary of State Solicitation Licensing Section on an annual basis. The licensure requirement also applies to professional fundraising counsel and professional solicitors. The specific exemptions from this licensure requirement listed in North Carolina General Statute § 131F-3 are:

1. Any person who solicits for a religious institution;
2. Solicitation of charitable contributions by the federal, state or local government or any agency thereof;
3. Any person who receives less than \$25,000 in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fundraiser or professional solicitor;
4. Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent accrediting body;
5. Any educational institution in compliance with Article 39 of Chapter 115C of the North Carolina General Statutes (Nonpublic Schools);
6. Any foundation or department having an established identity with any of the educational institutions in subparagraphs 4 and 5 above;
7. Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the North Carolina General Statutes, and any foundation or department having an established identity with such hospital, provided that the governing board of the hospital authorizes the solicitation and receives an accounting of funds collected and expended;
8. Any noncommercial radio or television station;
9. A qualified community trust as provided in 1.170A-9(e)(10) through (e)(14) of Title 26 of the Code of Federal Regulations;
10. A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor;
11. An attorney, investment counselor, or banker who advises a person to make a charitable contribution;

Solicitation of Contributions (cont.)

12. A volunteer fire department, rescue squad, or emergency medical service;
13. A Young Men's Christian Association or a Young Women's Christian Association; and
14. A non-profit continuing care facility licensed under Article 64 of Chapter 58 of the North Carolina General Statutes.

The fees required to make an application are set forth in Article 2 of Chapter 131F of the North Carolina General Statutes and have a statutory limit of \$200 or \$400 for a parent organization filing on behalf of its chapters. There are other application and bond requirements and procedures as well as other provisions, requirements, prohibitions and powers listed in the act. These are beyond the scope of this publication and any specific inquiries concerning the act should be directed to the NC Department of the Secretary of State, Solicitation Licensing Section, PO Box 29622, Raleigh NC 27626-0622.

Bingo Licensing

If a non-profit exempt organization seeks to conduct bingo games, it must obtain a license by making an application to the North Carolina Department of Crime Control & Public Safety, Bingo Licensing Section. The license is only valid for one year and can be renewed from year to year. A copy of the application and license shall be forwarded to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before any games are conducted. The number of sessions of bingo sponsored by a non-profit corporation is limited to two 5-hour sessions per week, and no two sessions may be held within a 48-hour period. The maximum prize that may be awarded at a single game is \$500, and the maximum aggregate amount of prizes that may be awarded at any one session of bingo is generally restricted to \$1,500. Any funds received in connection with a bingo game must be placed in a separate account. Disbursements may be made from this account only to pay the expenses of the bingo game and to further the charitable purposes of the corporation. See North Carolina General Statute § 14-309.5 - 309-14 for more information.

Raffles

It is lawful for any non-profit corporation which is recognized by the Department of Revenue as tax-exempt to conduct raffles, provided that the statutory limits set forth in North Carolina General Statute § 14-309.15 are observed. This statute limits the number of raffles that may be held by such a corporation to two raffles per year, and limits maximum prize for any one raffle to \$5,000 in cash or \$25,000 in personal property. Not less than 90% of the net proceeds of the raffle must be used to further the charitable purposes of the corporation. No formal registration is required. See North Carolina General Statute § 14-309.15 for more information.

C. PROCUREMENT

In an effort to ensure that goods and services are obtained in an efficient, effective manner and in accordance with applicable State requirements, the board of directors should establish policies and procedures which govern and control procurement activities of the non-profit organization.

A code of conduct should specify that no employee, officer, or agent is to participate in the selection, award, or administration of a contract if there is the possibility of either a real or a perceived conflict of interest. In addition, employees, officers, or agents are not to solicit nor accept gratuities, favors, or anything of monetary value from parties to the contract. Specific disciplinary actions to be followed when violations occur should be included in the code of conduct.

All procurement and contract activities should be conducted in a manner which provides, to the maximum extent possible, free and open competition among all parties. Non-profit organizations must be continually alert to organizational conflicts of interest as well as actions or practices on

the part of contractors and other parties which might restrict or eliminate competition. In order to ensure objective performance as well as eliminate unfair competitive advantages, contractors who develop or draft specifications, requests for proposals, etc. should be excluded from competing for the contract or award.

Procurement procedures should be developed in a manner which enables the non-profit organization to avoid the purchase of unnecessary and/or unreasonable items. For example, a process should be in place which ensures that a proper analysis and study of lease versus purchase alternatives is made whenever applicable. The solicitation process for securing either goods or services should also provide to prospective vendors complete and adequate information in order to avoid unnecessary delays or misunderstandings on the part of suppliers and/or contractors.

An effort should be made to ensure that small businesses, minority-owned firms, as well as business enterprises owned and operated by women are given every opportunity throughout the procurement process to participate on an equitable basis with larger suppliers and contractors.

Procurement files should document that a cost or price analysis was made with regards to every procurement. The price analysis process may include formal quotations, market prices, or other similar data while the cost analysis is concerned with a review and evaluation of cost elements to determine reasonableness, allocability, and allowability.

A contract monitoring process should be developed which ensures that contractors perform in accordance with terms, conditions, and specifications set forth in the contractual agreement. Also, provisions must be included to ensure timely and proper follow-up on all purchase and performance agreements.

Procurement policies and procedures of non-profit organizations should include a requirement that formal competitive bidding practices are to be used when contracting for goods and services with an expected value equal to or greater than an amount established by the governing board. In addition, such competitive bid practices are strongly encouraged, when practicable, on smaller procurements.

D. TRAVEL POLICIES AND PROCEDURES

The governing board should formulate and adopt a travel policy applicable to all employees and board members of the non-profit entity. The purpose of a travel policy is to establish procedures and controls which are necessary to ensure that public funds are only expended for travel which benefits a public purpose. The policy should emphasize that an employee or board member traveling on official business is expected to exercise the same care when incurring travel expenses as would be the case with a prudent person traveling on personal business and expending personal funds.

The policy should specify the types of travel expenses eligible for reimbursement, rates of reimbursement, persons/positions responsible for approval of travel and related reimbursements, and the procedures to be followed by employees when submitting requests for reimbursement. Persons on travel status should be encouraged to travel together, whenever possible, to maximize the benefits to be derived from the expenditure of public funds. Also, employees should be personally responsible for unauthorized costs and for any expenses incurred for personal preference or convenience.

There are several methods, such as advances, credit cards, allowances, and "after - the-fact" reimbursement, which can be used by a non-profit entity to pay for travel expenses; however, reimbursement after the employee or board member has paid for the actual expenses is the preferred reimbursement method from an accountability standpoint.

Reimbursement rates for lodging and subsistence should be set at a level which allows the individual to be reimbursed for reasonable costs incurred in the course of official travel. While General Statute 138-6 sets the maximum lodging and subsistence reimbursement rates for state employees, non-profit boards should adopt their own desired rates of reimbursement. In lieu of the board establishing travel rates and policies, State rates and policies will apply in determining reimbursable costs. Board established rates which are within the State guidelines will be considered to be reasonable and no further justification of the rates will be required.

Travel costs for transportation incurred while conducting official business, and for which a travel request was approved, should be reimbursed provided they are, supported by receipts and other documentation and the actual cost does not materially exceed the estimated cost. The most economical mode of transportation should be determined by the approving authority taking into consideration costs of transportation, time factor, and subsistence expenses. In addition, a per mile rate of reimbursement should be established for the use of personal automobiles for official business. The rate should not be in excess of the state's current reimbursement.

The adopted policy should state that any officer or employee who submits a written reimbursement claim that he/she knows to be false or approves a reimbursement request which he/she knows to be false will be subject to disciplinary action, including possible termination of employment and/or criminal proceedings.

To ensure that public funds are expended prudently and that the entity receives the maximum possible benefit for public funds expended for travel, authority for approval of travel requests by employees should be placed at a level of management that can evaluate the need for the requested travel and estimate the expected costs compared to the benefit of the requested travel. This will normally be an employee who has supervisory responsibility for the requesting party and budgetary control over the area in which the requesting party works. An employee given the authority to approve travel requests of other employees should not have authority to approve his/her own travel request. The chief executive officer of the entity and/or a member of the governing board should approve these travel requests. Authority for approval of travel requests of the chief executive director of the entity should be assigned to a member of the governing board who can evaluate the need for requested travel and the expected costs and benefits.

After the request for reimbursement has been approved for payment by the designated person, the request should be submitted to the accounting office. The finance officer/treasurer should determine that the reimbursement form has been properly approved, is mathematically correct, and that requested reimbursements agree to submitted receipts and are within the limits set by the travel policy. If an error in the reimbursement request is found, the requesting party should be informed so the error can be corrected. Before reimbursement is made, it should be determined that an amount sufficient to pay the request has been encumbered for payment or that there is a sufficient unexpended appropriation in the expenditure item.

E. INSURANCE

Non-profit organizations have a responsibility to carry the types of insurance coverage necessary to prevent undue loss in the event of accidents, thefts, fires, etc. Also, the governing board should carry liability coverage for directors and officers to protect against personal liability in the event of

a lawsuit against the organization. All board members involved in financial activities should be bonded the same as employees.

Set forth below are the more common types of insurance coverage applicable to non-profit organizations.

1. Vehicle

If the organization either owns or requires its employees to use personal automobiles in the performance of their duties, automobile insurance should be carried to protect against property damages and liability claims.

2. Worker's Compensation

This insurance coverage is required of all employers in order to compensate employees for losses resulting from injuries sustained in the course of employment. The coverage also serves to protect, to some degree, assets of the organization in the event of lawsuits for job-related injuries.

3. Fire

Coverage is designed to protect against fire related losses to building and contents. Contents should be insured regardless of whether an organization owns or rents the building which it occupies.

4. Fidelity

This coverage provides protection against loss of funds due to embezzlement activities on the part of officers or employees. Since many non-profit organizations are operated by a small staff and/or volunteers, it is imperative that this coverage be in effect to protect resources.

5. Liability

Coverage provides protection against claims for accidental injuries which occur on the premises, whether owned or rented by the non-profit organization. Coverage can apply to non-employees, volunteers, clients, as well as employees.

Since the insurance industry is quite complex and it is so important that non-profit organizations have proper and adequate coverage, the governing board is encouraged to secure the advice and counsel of a qualified insurance agent prior to beginning operation.

F. FRAUD/MISUSE OF FUNDS

The governing board of a non-profit organization is expected to adopt policies and procedures which will ensure that appropriate, timely action is taken in the event of an allegation and/or evidence of possible misuse of either funds or assets. In addition, the board must inform all personnel of the policy statement and emphasize the importance of compliance with the specified course of action.

The board policy should specify, at a minimum, the following:

- Any officer or employee who receives information or evidence of theft, embezzlement, misapplication, or misuse of funds or assets shall immediately report the matter to his/her supervisor. In no case should such notification be later than three days from the time the information or evidence is received.
- The supervisor shall report such information or evidence in writing to the director of the non-profit organization within one day of receipt.
- The director shall report the matter in writing, within one day, of receipt to the governing board's chairperson.
- The chairperson shall report the matter in writing, within five days of receipt, to the director of the funding division within the Department of Health and Human Services.

Upon receipt of such notification, the division director shall report the matter, within three days, to the Secretary's Office which has ultimate responsibility for notifying other appropriate parties.

G. Whistle-Blower Protection

The Sarbanes Oxley Act establishes criminal penalties for any action taken in retaliation against whistleblowers and also increases a whistleblowing employee's ability to sue an employer, to collect a civil remedy if discriminated against and to receive special damages and attorney's fees. Because of the way the Whistle-Blower Protection provisions of the Act were written, it is generally held that they apply to all types of public sector entities, including non-profit organizations. Since this provision applies to non-profit organizations, policy and procedures must be developed to:

1. Take complaints seriously and handle them appropriately;
2. Establish a confidential and anonymous mechanism to encourage employees to report; and
3. Make sure no punishment for reporting claims is allowed even if the claims are unfounded.

A Sample Whistleblower Policy is available on the National Council of Non-profit Associations (NCNA) Web site. [<http://www.ncna.org/>] or the Office of the State Auditor's web site, [<http://www.ncauditor.net/Non-profitSite/samplepolicies/PE%200005%20Whistleblower%20Policy%20Example.pdf>].

A review of "The Sarbanes-Oxley Act and Implications for Nonprofit Organizations" published by BoardSource (formerly the National Center for Nonprofit Boards) and Independent Sector (a coalition of corporations, foundations, and private voluntary organizations that works to strengthen America's nonprofit organizations) is recommended. The document is found at <http://www.independentsector.org/PDFs/sarbanesoxley.pdf>

H. Records Retention

The Document Destruction provisions of the Sarbanes Oxley Act are generally held to apply to all types of public sector entities, including non-profit organizations. Document Destruction provisions of the Act make it a crime for a non-profit organizations to destroy, alter, cover up, or falsify (or to persuade someone else to do so), a document to prevent its use in an official proceeding. Non-profit organizations should develop and follow a formal record (document) retention and destruction policy. Maintain and archive all appropriate records about operations (e.g., financial records, significant contracts, real estate and other major transactions, employment files, fundraising obligations, etc.). A Sample Document Destruction Policy is also available on the NCNA Web site or the Office of the State Auditor's web site, [<http://www.ncauditor.net/Non-profitSite/samplepolicies/PE%200004%20Recordkeeping%20Policy%20Example.pdf>].

The Background on DHHS Records Retention and Disposition Schedule for Grants can be found at <http://www.dhhs.state.nc.us/control/recordback07.pdf>

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