



Strengthening Nonprofits to Build Communities

A Guide for Nonprofit Organizations: General Charitable Organization Compliance

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This compliance guide is published by The Law Project (LP), a project of the Chicago Lawyers' Committee for Civil Rights, formed in 1985 and dedicated to assisting non-profit groups and small business entrepreneurs with neighborhood revitalization efforts. This guide was originally published in 1989. A second edition, written by Ethel Kaplan, Esq., a tax specialist and LP volunteer, was published in 1993. The Law Project extends its appreciation to Latham & Watkins LLP and Quarles & Brady LLP for assistance with both this third edition of **A Guide for Nonprofit Organizations: General Charitable Organization Compliance** (General Compliance Guide) as well as the separate **A Guide for Nonprofit Organizations: Employment Issues** (Employment Issues Guide) that is referenced herein.

The Law Project
100 North LaSalle Street, Suite 600
Chicago, Illinois 60602-2403
Tel.: (312) 939-3638
Fax: (312) 630-1127
Website: www.thelawproject.org

Both this General Compliance Guide and the separate Employment Issues Guide are intended to provide accurate information regarding the subject matters covered. They are not, however, a substitute for legal, accounting, or other professional services. The mere use of these guides will not create any professional relationship, attorney-client or otherwise. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

To comply with Internal Revenue Service (IRS) regulations, The LP advises readers that any discussion of Federal tax issues in this guide was not intended to be used, and cannot be used by readers, (1) to avoid any penalties imposed under the Internal Revenue Code or (2) to promote, market or recommend to another party any transaction or matter addressed in this guide.

TABLE of CONTENTS

I. Introduction	1
II. Operating a Not-for-Profit Organization	2
A. The Board of Directors and Director Duties.....	2
B. Compensation of Directors and Key Employees	8
C. Employee Matters.....	9
III. Compliance with Federal and State Laws.....	11
A. Documenting Donations	11
B. Federal Tax Filings	14
C. Illinois State Tax Filings	15
D. Unrelated Business Taxable Income (UBTI).....	16
E. Maintaining and Updating Corporate Records	17
F. Registrations Required Prior to Soliciting Donations.....	19
G. Ongoing Illinois Secretary of State Filing Requirements	20
H. Ongoing Employee Filing and Withholding Requirements	21
I. Public Disclosure Requirements.	21
J. Political Activity and Lobbying.....	22
K. Governing Policies.....	23
IV. Director Protections from Personal Liability.....	25
A. Exercise of Business Judgment.....	25
B. Immunity	25
C. Indemnification.....	26
V. Conclusion	26
VI. Summary Table of Filings and Regular Responsibilities.....	28
VII. Resources Guide.....	30

I. INTRODUCTION

Nonprofit organizations make important differences in the lives of many Americans every year by providing services and programs that benefit the public. In fact, nonprofit organizations are called “nonprofit” because they seek to accomplish important social goals, rather than merely operating to make a monetary profit. To encourage certain activities such as education, community development and many others, lawmakers have created special rules to support nonprofit organizations. This General Compliance Guide explains several important aspects of these rules and answers questions related to running nonprofit organizations.

The laws applicable to nonprofit organizations can be complicated. Some of the complications are because nonprofit organizations can be created and organized in different ways. This General Compliance Guide does not cover all nonprofit organizations, but only offers guidance for operating an organization that has been incorporated as an Illinois not-for-profit corporation (“NFP”). This General Compliance Guide also focuses only on certain federal and Illinois state laws. Operating an NFP in Illinois requires becoming familiar with multiple sources of regulation, from federal tax laws to state statutes to court decisions and even county, city or village ordinances. Consequently, this General Compliance Guide will not answer all of your questions, and you should seek professional advice from an accountant, a lawyer or The LP for any additional questions. If you are interested in how to create a tax-exempt NFP or other issues affecting the operations of an NFP, please see the Resources Guide at the end of this General Compliance Guide.

This General Compliance Guide is intended to address organizations that (1) are incorporated in the state of Illinois as not-for-profit corporations, (2) are managed by a board of directors and do not have members, (3) are tax-exempt entities under Section 501(c)(3) and public charities under Sections 170(b)(1)(A)(vi) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (the “Code”), (4) are registered with the Illinois Attorney General’s Charitable Trust Bureau and (5) have a business license from the Illinois Department of Revenue. For organizations other than those described above, some provisions of this General Compliance Guide may not apply and additional laws and regulations may apply. Special rules may also apply to certain types of organizations, such as hospitals, churches and schools, none of which are addressed in this General Compliance Guide.

II. OPERATING A NOT-FOR-PROFIT CORPORATION

A. The Board of Directors and Director Duties

NFPs may be small organizations with a few people, or very large organizations employing hundreds or thousands of people. While the organizational structures of NFPs vary, this General Compliance Guide focuses on the most common type of NFPs, those that have no members. For an NFP without members, ultimate control of the organization rests generally with its board of directors. A board of directors (or “board” for short) manages, controls, analyzes and implements the NFP’s mission and goals and is responsible for properly operating the NFP, adhering to the stated purpose of the NFP, not allowing the NFP’s resources to be wasted and complying with various rules related to corporate, tax, employment and regulatory law. The board discusses matters at regularly scheduled meetings and acts by voting on the matters discussed.

In managing an NFP’s affairs, the members of the board, called “directors,” must always act in the best interests of the NFP. Each director is a fiduciary who has specific obligations to the NFP called fiduciary duties. A fiduciary is a person who has the power and obligation to act for another person or entity under circumstances that require total trust, good faith and honesty.



The most important fiduciary duties are the duty of loyalty, the duty of care and the duty of obedience. These duties are described below. For a review of how a board functions please see the booklet “Introduction to Board of Directors Meetings for Emerging Not for Profit Illinois Corporations” described in the Resource Guide at the end of this General Compliance Guide.

1. Duty of Loyalty; Conflicts of Interest

One of the duties that a director of an NFP owes to the NFP is the duty of loyalty. The duty of loyalty requires that directors always act in the best interests of the NFP and not for the benefit of themselves or other parties. Breaches of the duty of loyalty usually involve usurping corporate opportunities or self-dealing (each of which is described below). Often a breach of the duty of loyalty results from a director on a board financially benefiting from his or her relationship with the NFP, and the board acting without addressing this potential conflict of interest. Conflicts of interest also arise when a director’s friends or family members have interests that conflict with, or appear to others to conflict with, the interests of the NFP, and the friends or family members receive a financial benefit because of their relationship to the director.

a. Usurpation of Corporate Opportunities

A director usurps an NFP's opportunity when he or she personally benefits from a transaction that should have benefited the NFP.

When a director usurps such an opportunity, he or she has breached the duty of loyalty. Disclosure is the key to avoid a claim that a director has usurped an NFP's opportunity. A director should not be liable for usurping an opportunity if he or she first discloses the opportunity to the NFP's board of directors and then gives the NFP a chance to pursue the opportunity. If the NFP decides not to pursue the opportunity, then the director may do so.

Example:

Suppose an NFP desires to acquire land, and a director who is searching for a suitable piece of land on behalf of the NFP finds a property for sale at an unusually low price. If that director purchases the land for the director's own personal use without first presenting the opportunity to the NFP, the director has taken the NFP's opportunity to purchase the land.

b. Conflicts of Interest

The duty of loyalty requires that directors of an NFP act in the best interests of the NFP. Directors may not use their influence with the NFP to advance their own interests when those other interests conflict with the interests of the NFP. The interests of directors potentially giving rise to a conflict may be direct or indirect. A direct interest means that the director is entering a transaction with the NFP that personally benefits the director. An indirect interest could arise when the director benefits from a transaction between the NFP and some other party to which the director is related or affiliated. Often, such indirect conflicts of interest may arise when an NFP considers entering into a transaction or taking some other action in which one of its directors (or persons closely related to its directors) has a material interest.

The conflict of interest in the example above is between the director's indirect personal interest in maximizing profits for the moving company and his or her duty to minimize expenses for the NFP. These indirect conflicts can also result from a director's service on the board of another NFP (for example, the NFP may be considering making a grant to an organization on whose board the director also serves).

Example:

Suppose one of the NFP's directors is also a director or executive in a small for-profit company that rents moving trucks, ABC Co. If the NFP needs to rent a moving truck, it might appear to make sense to use ABC Co. because it is familiar and easy to contact. However, if the NFP uses ABC Co., the NFP's director now has competing loyalties. The interested director has a duty to the NFP to minimize its costs by paying a low price for the truck rental, but also has an interest in maximizing the profits of ABC Co. by charging a high price. Consequently, this director may be at risk of violating the duty of loyalty to the NFP by self-dealing.

c. Overcoming Conflicts of Interest

As explained above, self-dealing occurs when another party affiliated with a director transacts business with the NFP. Self-dealing is sometimes permissible without violating the duty of loyalty if the transaction is fair to the NFP, the interested director is open and up-front about the conflict of interest and certain steps are taken to demonstrate the fairness of the transaction. As mentioned in the example above, there may be good reasons why an NFP wants to do business with a director personally or with a company in which a director or his or her family member has a financial interest (i.e. familiarity with the company and confidence in the quality of work provided). In many cases, a director can satisfy his or her duty of loyalty if certain precautionary steps are taken. However, transactions involving a grant or other transfer of funds (without any corresponding receipts) from one organization to another cannot be cleansed using the process outlined below.

The first step in overcoming a self-dealing conflict is to identify the conflict as soon as possible and definitely before the transaction is finalized. Once a conflict is identified, the interested director and the NFP should take the following steps:

1. The interested director must disclose the conflict of interest to the entire board of directors of the NFP.
2. The board should obtain independent information to determine what the terms of a comparable arms-length transaction would be. Using this information, the board can confirm whether the interested director's proposal is fair to the NFP. This step may require the board to request bids or quotes from other suppliers or appraisals from independent parties or any other independent information that provides a basis of comparison between the interested director's proposal and a proposal from a disinterested person.
3. The NFP should prohibit participation by the interested director in the discussions about and voting on the transaction, which is best ensured by not allowing the interested director to be present during the discussion and voting process. This is referred to as having the interested director "recuse" himself or herself from the transaction. However, the board may want to ask questions of the interested director before the discussion.

If the directors who do not have a conflict of interest (referred to as "independent directors") decide – without the vote or influence of the interested director and based upon appropriate independent information – that the transaction is in the best interest of the NFP, the transaction may be entered into without violating the duty of loyalty. If the board of directors does not follow these steps, and the transaction is later challenged, the NFP and the interested director will have the heavy burden of proving that the transaction was not a violation of the duty of loyalty.

The best way to prevent problems with the duty of loyalty is for an NFP's board of directors to adopt a formal policy for dealing with conflicts of interest. This way,

directors will know exactly how to handle potential conflicts of interest before they arise. Implementing a formal policy also raises awareness of the duty of loyalty obligations with the directors. A conflicts policy should also require each of the NFP's directors to complete annually a conflicts questionnaire on which each director discloses his or her other financial interests. This provides additional security that a conflict will not be overlooked. NFPs should be aware that both Internal Revenue Service ("IRS") Form 990 (discussed in Section III.B.1 below) and IRS Form 1023 – Application for Recognition of Income Tax Exemption ask whether an NFP has adopted a conflict of interest policy, and Form 990 also solicits information from directors and officers relating to potential conflicts on a regular basis.

d. Confidentiality

Individuals serving as directors of NFPs learn detailed information about the operations and the financial condition of the NFP. Generally, directors should keep this inside knowledge confidential unless they are authorized by the NFP to disclose the information. Information that has previously been disclosed publicly under the filing requirements of the NFP would no longer be considered confidential once it is publicly available. See Section III.I for a discussion of certain information that must be disclosed to the public upon request by matter of law.

2. Duty of Care

Another duty of directors is the duty of care. As the name implies, the duty of care means that directors must pay attention to the NFP and use appropriate care to manage its affairs. The duty of care generally requires directors to manage the affairs of the NFP in good faith with the care an informed prudent person in a like position would exercise under similar circumstances. Directors are expected to gather and review all relevant information so that they can make informed business decisions that they reasonably believe to be in the best interests of the NFP. Directors must be reasonably informed about the corporation's mission and activities, tax-exempt status, responsibilities as a tax-exempt organization and legal obligations. In making informed business decisions, directors may rely on management and other employees to generate reports and other relevant information and to carry out the day-to-day activities of the NFP. Directors may also rely on professionals, such as accountants, to perform certain specialized jobs and provide specialized materials for consideration by the board. However, directors always must assure that the information being relied upon is obtained from qualified sources and must monitor the NFP's activities and investigate any issues that seem out of the ordinary.

3. Duty of Obedience

Directors of an NFP must ensure that they comply with local, state and federal laws, and that their actions as directors are true to the organization's purposes and goals, as stated in its articles and bylaws and consistent with its status as a not-for-profit, tax-exempt corporation. The directors must also abide by the terms of any other applicable governing documents, which may include documents requiring specific uses of funds like the terms of a gift or bequest.

It is not necessary for directors to remember the names of these fiduciary duties, but it is critical that they understand the responsibilities associated with each duty. In essence, the duties of loyalty and care, and obedience mandate that directors regularly attend and actively participate in board meetings, review materials and reports provided by the NFP's management, employees and outside professionals, ask questions and raise issues when appropriate, and always put the interests of the NFP before their own.

4. Additional Statutory Duties

In addition to the duties discussed above, certain Illinois laws relating to charitable trusts specify certain fiduciary duties that also apply to directors of NFPs, including: avoidance of wasting charitable assets; avoidance of incurring penalties, fines and unnecessary taxes; adherence to the NFP's charitable purpose; timely filing of registration and reports with the Illinois Attorney General; compliance with Illinois laws; and maintenance of detailed books and records. Directors should know that additional requirements may apply to individual NFPs under certain circumstances. Staying aware of all the applicable laws is the duty of the director. Illinois law also places special responsibilities on directors when they (i) decide whether the NFP should loan money to directors or officers, (ii) make decisions about distributions of the NFP's assets or (iii) take actions at the time of the dissolution of the NFP.

5. Excess Benefit Transactions and Intermediate Sanctions

In addition to satisfying their fiduciary duties under Illinois law, directors of NFPs must ensure they do not engage in what could be construed by the IRS as an "excess benefit transaction." An excess benefit transaction generally occurs if an NFP directly or indirectly provides compensation or other economic benefits to a "disqualified person" and those benefits are worth more than what the disqualified person provides in exchange. The difference in value is the "excess benefit." Furthermore, any benefit transferred to a disqualified person that is not approved as compensation for that person and is not recorded and reported by the NFP as compensation at the time it was transferred will automatically be considered an excess benefit. A disqualified person is anyone who is (or has been in the past five years) in a position to exercise substantial influence over the affairs of an NFP, as well as that person's family members and any corporation or other legal entity in which the person or the family member owns more than a 35% interest. Because of their influence in the affairs of the NFP, directors would

be considered disqualified persons, so current directors and people who have served as directors within the last five (5) years would be subject to these rules.

If the IRS determines that an excess benefit transaction has occurred, it can impose penalties known as “intermediate sanctions” on the person receiving the benefit in the form of an excise tax equal to 25% of the excess benefit. That person must also pay back the excess benefit to the NFP within a certain period of time or the IRS may impose additional sanctions on that person equal to 200% of the excess benefit. In addition, the IRS may impose monetary sanctions of 10% of the excess benefit on any individual director, manager or officer of the NFP who knowingly participated in the excess benefit transaction, including the person who benefited. This tax on management is capped at \$20,000 per transaction. These sanctions are considered “intermediate” because they are not as severe as revoking the NFP’s tax exemption, but in an extreme case, if the excess benefit transaction is so significant that the IRS determines paying back the benefit and the tax are insufficient penalties, it may seek to revoke the NFP’s tax-exempt status.

The IRS provides three specific steps that directors can follow to demonstrate a transaction did not result in an excess benefit. First, the transaction must be disclosed to and approved by the board of directors without the vote or influence of the person to whom the benefit was provided, similar to the way an NFP resolves an interested director’s conflict of interest. Second, the board must demonstrate that it relied on appropriate data in approving the transaction, such as compensation reports or other materials relating to the fair market value of the services rendered and the benefits provided. Finally, the board must adequately document the basis for approving the transaction. If these three

Example:

Suppose Director A owns a controlling interest in ABC Co. When the NFP wants to hire a trucking company, Director A tells the other board members that the NFP should hire ABC Co. and pay it \$5,000. The NFP then agrees to pay a \$1,000 “finder’s fee” to Director A for finding a suitable trucking company. The board enters into a contract with ABC Co., pays it \$5,000 and pays Director A \$1,000. If the NFP sought bids for this work from other trucking companies, it would have found that it could have paid another company \$3,000 to perform the same work, and if the NFP had contacted a free local business referral service, it could have found a suitable trucking company for free.

This transaction creates significant risks, not only because it likely violates the duty of loyalty for Director A, but also because it raises questions of excess benefits. Director A would be liable and the other directors who approved the transaction could be subject to intermediate sanctions. The IRS could require that Director A pay back the \$1,000 finder’s fee to the NFP plus a tax to the IRS equal to 25% of that amount. Because ABC Co. is owned by Director A, it also could be required to pay back to the NFP the \$2,000 difference between the amount it was paid and the actual value of the work, and pay to the IRS a tax equal to 25% of that amount. If either Director A or ABC Co. fails to pay back the excess benefit within a certain time, the IRS could impose an additional tax equal to 200% of each of the excess benefit amounts.

If the NFP’s other directors knew about Director A’s ownership of ABC Co. and they knew ABC Co. was overcharging for its services, or if they knew that Director A did not deserve the \$1,000 finder’s fee for finding a suitable trucking company, the IRS could impose a penalty equal to 10% of the excess benefit on each director who approved the transaction for which he or she would be personally responsible. In this case, if the excess benefit to Director A (i.e. the \$1,000 finder’s fee) and the excess benefit to ABC Co. (i.e. the \$2,000 overcharge) are considered separate occurrences, an approving board member could be individually liable for 10% of both amounts (i.e. \$300) for knowingly approving the transactions.

criteria are satisfied, the burden then shifts to the IRS to prove that an excess benefit transaction occurred. For a more detailed overview of matters relating to excess benefit transactions, see the IRS website: www.irs.gov/charities/

B. Compensation of Directors and Key Employees

Although directors are allowed to be compensated for their services as directors, many directors serving on boards of NFPs are not compensated based on their role as directors and instead volunteer their time to the organization. If an NFP compensates a director for non-director services (e.g. for legal fees), it should clearly record that the compensation was not for services provided as a director. If an NFP compensates its directors for their service as directors, the risk of the directors being found personally liable in a lawsuit challenging their actions will increase because the directors will not be able to claim the legal immunity granted to uncompensated directors. That immunity is discussed further in Section IV.B.



Many NFP boards of directors give titles such as president, treasurer and secretary to individual directors (called “board officers”), but some NFPs also use titles for employees that sound like the names of board officers, such as having a “president” instead of an “executive director.” These similarities in titles can be confusing, and the NFP should clearly document whether a person is a director with the responsibilities of a board officer position or is an employee of the NFP. If a person acts solely as a director and performs no other services for the NFP, that person would not be considered an employee for income tax reporting. Any payments to directors who are not employees should be treated the same as payments to other independent contractors. If a director is also an employee of the NFP, then the NFP should treat all compensation paid to the director as employee compensation subject to withholding and employment taxes.

Setting an appropriate salary for a high-level employee (who may also be a director or board officer) can be a very difficult job for the board. Most officers, senior employees and directors of an NFP will work closely with each other and may know one another on a personal level. Even for the most well-intentioned directors, there is an obvious conflict of interest when they are asked to decide a salary for themselves or their friends.

One option for avoiding conflicts of interest and ensuring that employees’ salaries, including those employees also acting as directors and officers, are set at appropriate levels is for the board to form a committee to set compensation. Creating an independent “compensation committee” simply means that the board officially designates some of its members to act as the committee. The full board usually sets out the goals for the compensation committee and outlines a process that the committee should use to set compensation levels. This is often accomplished in a document called

a “committee charter.” This committee can have as few as two members or it can include all of the directors other than the individual whose salary is in question. The individual whose salary is in question should never sit on the compensation committee while it is discussing his or her salary, and directors should not be allowed to vote on compensation of their family members or significant others. The compensation committee should gather information about salaries at NFPs of similar size, location and activity. For larger NFPs, it may even be appropriate to hire a consulting firm that specializes in compensation comparisons. Once the compensation committee knows the salaries for people performing similar work, it can make an informed decision regarding the pay for its employees. Any special “perks” must also be considered part of the compensation package, so the compensation committee should evaluate vacation policies and other non-monetary benefits like health benefits, free parking or child-care when it reviews the market. Illinois law imposes restrictions on loans from an NFP to its officers and directors and any NFP considering a loan to a director or officer should consult a lawyer familiar with not-for-profit director compensation laws.

Generally, compensation should be set at a level similar to the market level. If a compensation committee sets the salary far above the market level, it will need to justify this extra pay by identifying specific reasons why its directors, officers, or employees should be paid more for their services. As discussed in Section III.E below, the NFP should keep written records of all major decisions, including details about how compensation decisions were made and the information relied on in making those decisions.

Records regarding salaries and compensation decisions are important because those decisions can be subject to IRS review. The amount of compensation paid may be reviewed by the IRS to determine whether it was “reasonable” within the IRS’s definition and a person receiving “unreasonable” excess compensation (and the NFP’s directors that approved it) may be subject to the excess benefit transaction penalty taxes discussed earlier in Section II.A.5. If an NFP is engaging in a transaction with one of its disqualified persons, then it should follow the three-part procedure described in the last paragraph of Section II.A.5.

Also, any NFP filing IRS Form 990 or IRS Form 990-EZ must disclose director, officer and key employee compensation, and if the compensation exceeds specific levels additional details about the compensation must be provided. If the NFP pays compensation exceeding specific levels to former directors, officers or key employees, then disclosure of this compensation is also required. There are complicated rules concerning what should be included in calculating compensation and a full discussion of these rules is beyond the scope of this General Compliance Guide.

C. Employee Matters

Many NFPs start small, but as they grow they find that they need to hire employees to better carry out their objectives. Many issues related to employees vary from state to

state, and the complexity of the law in this area does not allow for a comprehensive discussion of all relevant employment laws. Therefore, this General Compliance Guide briefly addresses the question of whether your organization has employees. If so, you may wish to refer to the separate Employment Issues Guide also published by the LP, which highlights a broader range of employment issues, but which is limited to federal and Illinois law and can offer only a general overview of the relevant law. **Failure by the NFP to comply with certain employment laws, such as the laws requiring employers to withhold taxes from employee wages, can result in personal liability for directors.** If your organization operates in other states or has a specific employment law question, we encourage you to seek appropriate legal counsel.

1. Employee Classification

Before taking steps to comply with employment laws, an NFP must first determine whether a worker should be classified as an employee. In general, workers tend to fall into three categories: volunteers, employees and independent contractors. People who are not paid for their services generally should be classified as “volunteers.” Employment laws usually do not apply to volunteers. On the other hand, workers who are paid for their services are classified as either employees or “independent contractors.” For these purposes, it is important to remember that “payment” can include non-monetary employment benefits like health insurance, in addition to monetary payments.

Whether an individual performing work for an NFP is an employee or an independent contractor depends on several factors, including the amount of direct control the NFP retains over the specific means or method by which the individual completes his or her work (this is the most important factor), how the individual is compensated, the amount of professional skill required to perform the individual’s work, which party provides the tools, equipment, or materials to accomplish the work, which party sets the individual’s work schedule, and others.

Example:

Suppose an NFP serving the homeless community pays a nurse to come to its facility once a week to evaluate the condition of patients in need of health care. The NFP does not tell the nurse how he should treat or evaluate the patients at the clinic; does not have the power to control the rate the nurse charges for his services; does not provide him with his stethoscope, blood pressure monitor, uniform, or other equipment; and does not directly control the nurse’s schedule. In this case, the nurse would not be considered an employee even though he was paid for his services to the NFP, but instead would be an independent contractor.

If a worker is considered to be an employee, the NFP will need to consider and comply with all relevant employment laws, including everything from federal and state minimum wage and hour rules to anti-discrimination laws. However, if a worker is considered to be an independent contractor, some employment laws and regulations will not apply. A helpful guide in making the determination between employee and

independent contractor, and other useful information regarding employee classification, can be found on the IRS's website:
www.irs.gov/businesses/small/article/0,,id=99921,00.html.

2. Employee Documentation and Administration

NFPs with employees generally must comply with several federal and state laws covering a wide range of subjects, such as discrimination, minimum wage requirements and overtime wages, employee safety and taxes. Several of these laws require an NFP to file documentation at the time of hiring an employee, as well as at regular intervals during employment. Some of these employment laws may apply only to employers with more than a certain number of employees, so very small NFPs should check with an employment attorney to determine whether any employment laws may not apply. However, most NFPs should assume that the employment laws do apply to them until they confirm otherwise. Additional details about laws affecting Illinois employers as well as documentation and filing requirements can be found at the Illinois Department of Labor (IDOL) website: www.state.il.us/agency/idol/ and the Illinois Department of Employment Security (IDES) website: www.ides.state.il.us/forms/. All employers, including NFPs, must also withhold taxes on behalf of the government from the paychecks of their employees and pay these funds to the government. Additional information about withholding obligations and many other employment-related topics can be found in the separate Employment Issues Guide.

III. COMPLIANCE WITH FEDERAL AND STATE LAWS

A. Documenting Donations

Donor contributions generally provide the main source of funding for NFPs classified as public charities for federal income tax purposes. Proper documentation of donations is the responsibility of donors when they claim tax deductions, and some of the rules do not specifically require the NFP to provide the documentation. However, providing donors with the proper documentation encourages donations, so the NFP's efforts to help donors comply with these requirements directly benefit the NFP. Some donors might also condition their donation on having the NFP provide the proper documentation. Different requirements apply to different sizes and types of donations, and a more comprehensive overview of these requirements may be found in IRS Publication 526 – Charitable Contributions – available on the IRS website. This section highlights some of the more common rules for documenting donations, but is not a comprehensive explanation of all applicable rules.



1. Cash Contributions

In the case of cash donations, regardless of the amount, a donor will need to retain written evidence of the donation identifying the (a) name of the NFP, (b) date of the

contribution and (c) amount of the contribution. This written evidence can be an acknowledgement from the NFP or documentation from sources other than the NFP, such as a cancelled check or other bank or credit card statements. In the case of donations made through payroll deductions, the donor must retain payroll deduction records.

For cash donations of \$250 or more, the donor will need to obtain and retain payroll records or a written acknowledgement from the NFP that identifies the (a) name of the NFP, (b) date of the contribution and (c) amount of the contribution. In the case of payroll deductions, the donor must retain payroll deduction records. The acknowledgement must also state whether the NFP provided any goods or services (other than certain token benefits and membership benefits) in return for the donation. If the NFP does not provide the acknowledgement, the donor cannot properly claim a tax deduction for the donation.

2. Quid Pro Quo Contributions

A quid pro quo contribution is generally any donation made by a donor in exchange for goods or services received from the NFP, such as paying \$100 to attend a charity dinner when the value of the dinner is only \$60. For quid pro quo donations, an NFP must provide the donor with a written acknowledgement of any payment in excess of \$75 regardless of whether the donor will be claiming a tax deduction. The acknowledgment must include: (1) a statement that the amount that is deductible for federal income purposes is limited to the amount of the contribution over the fair market value of the goods or services that the donor received in return for the contribution; and (2) a written estimate of the fair market value of the goods or services that the donor received in return for the contribution, unless the goods or services were of insubstantial value. As of the 2010 tax year, goods and services are considered insubstantial: (1) if the fair market value of such goods or services does not exceed 2% of the lesser of the contribution or \$96 or (2) if the contribution is at least \$48 and the goods provided bear the NFP's name or logo, such as on a mug, calendar or pen, and cost \$9.60 or less.¹ In the case of a donor that receives only intangible religious benefits, such as admission to a religious ceremony, the NFP must provide a statement that the only benefit the donor received the intangible religious benefit.

For example, if the value of a \$100 charity dinner is \$60, only \$40 would be deductible as a charitable contribution. Even though the deductible contribution in this example is less than \$75, the NFP is required to provide the acknowledgement because the total payment exceeded \$75. If the NFP does not provide the acknowledgement, a penalty may be imposed on the NFP and the donor will not be able to claim the tax deduction.

3. Non-Cash Contributions

¹ These dollar limits will change every year. IRS Exempt Organizations Customer Account Services at (877) 829-5500 will provide inflation-adjusted amounts for subsequent years.

Non-cash contributions include donated items such as food, clothing, supplies, furniture and automobiles. The table below summarizes the general documentation requirements of NFPs and donors relating to non-cash contributions:

Value of Non-Cash Contribution	Requirements
Less than \$250	<p>(1) Donors must obtain and retain a written acknowledgement from the NFP* identifying (a) the name of the NFP, (b) the date and location of the contribution and (c) a reasonably detailed description of the donated property, which need not include the value of the property.</p> <p>(2) Donors must keep written records and descriptions of items donated, including a good faith estimate of the fair market value of the property at the time it was donated.</p> <p>* Donors are not required to obtain a written acknowledgement of donations of less than \$250 when it is impractical to do so (for instance, when a donor leaves items at an unattended drop box).</p>
At least \$250 but not more than \$500	<p>(1) & (2) above.</p> <p>(3) In addition to the items in (1) above, the written acknowledgement from the NFP must also include a statement whether the NFP provided any goods or services in return for the non-cash contribution, and if so, a description and a good faith estimate of the value of the goods or services provided (or, a statement that the only goods and services provided were intangible religious benefits).</p>
Over \$500 but not more than \$5,000	<p>(1), (2) & (3) above.</p> <p>(4) Donors must keep written records of (a) how the donor acquired the property (for example, by purchase, gift or inheritance), (b) the date donor acquired the property and (c) the donor's adjusted tax basis in the property.</p>
Over \$5,000	<p>(1), (2), (3) & (4) above.</p> <p>(5) Donors must obtain a qualified written appraisal of the property.</p> <p>(6) Donors must obtain an executed IRS Form 8283 from the NFP acknowledging receipt of the property and affirming the NFP's obligation to file IRS Form 8282 in the event the NFP disposes of the donated property within three years. Signing Form 8283 does not represent concurrence by the NFP in the appraised value of the property.</p>

In addition to these general documentation rules, there are special rules relating to an NFP's disposal of donated property and for donations of closely held securities, inventory, intellectual property, automobiles, boats or airplanes. These additional rules are beyond the scope of this General Compliance Guide. For further information, consult IRS Publication 1771 – Charitable Contributions, Substantiation and Disclosure Requirements, and IRS Publication 526 – Charitable Contributions, or contact an accountant or a lawyer familiar with charitable contribution laws.

B. Federal Tax Filings

1. IRS Form 990, Form 990-EZ and Form 990-N

Exemption from federal income tax under Code Section 501(c)(3) generally means an organization is not required to pay income tax in the same way an individual or for-profit corporation would be required to pay income tax every year. However, the IRS does require every NFP to file an annual information return detailing certain information about the organization and its finances. The information is typically provided on Form 990 or Form 990-EZ, or for very small NFPs, a “postcard” filing known as a Form 990-N. **If an NFP fails to file its information return for three consecutive years, the IRS is required to revoke its tax-exempt status.** Organizations that have not yet received their tax exemption from the IRS are required to file either Form 990 or Form 990-EZ for years during which their application for exemption is pending; they may not file Form 990-N in those years even if otherwise eligible. Returns filed while an NFP’s Form 1023 is pending should reference the pending application.

a. IRS Form 990.

The IRS revised Form 990 in 2008. The new Form 990, along with instructional materials related to the new form from the IRS, can be found on the IRS website: www.irs.gov/charities/index.html. The new Form 990 is much more detailed than the prior Form 990 and requires more information concerning additional policies and procedures of the NFP. There are 16 schedules to Form 990, but not all of them are required for all NFPs. The following schedules are likely to apply to most NFPs:

Schedule A	—	Public Charity Status and Public Support
Schedule J	—	Compensation Information
Schedule L	—	Transactions with Interested Persons
Schedule M	—	Non-cash Contributions

b. IRS Form 990-EZ.

Smaller NFPs meeting certain requirements are eligible to file a simplified version of the form known as Form 990-EZ. The eligibility requirements for filing Form 990-EZ include a “gross receipts” requirement as well as an asset requirement. Gross receipts are defined by the IRS as all amounts received by the NFP from all sources during the year, without subtracting any cost or expenses. To be eligible to file a Form 990-EZ for 2010 (filed in 2011) and later years, the NFP’s gross receipts must be between \$50,000 and \$200,000, and its assets must be less than \$500,000.

c. IRS Form 990-N

The smallest NFPs may be eligible to file an even simpler form called the Form 990-N or “postcard” filing. The form can only be filed electronically:

<http://epostcard.form990.org>. For an NFP to be eligible to file Form 990-N, its gross receipts must be “normally” below \$50,000 (from and after the 2010 tax year). This requirement is explained in further detail in Appendix B to the official IRS instructions for Form 990-EZ, which is available on the IRS website:

<http://www.irs.gov/charities/article/0,,id=177338,00.html>. Note that some organizations otherwise eligible to file the Form 990-N may elect to file the Form 990-EZ or full Form 990 to record their financial information for the IRS and increase the transparency of the NFP’s organization.

Whether the NFP files a Form 990, Form 990-EZ or Form 990-N, the information return must be filed with the IRS by the 15th day of the 5th month after the NFP’s accounting period ends. For NFPs with a calendar-year based accounting period ending on December 31, the information return must be filed by May 15 of the following year. Under most circumstances, an NFP may file for an automatic three-month extension to the deadline for its Form 990 by filing Form 8868 on or before the deadline for its return.

2. Other IRS Filings

In addition to its regular Form 990 filing obligations, an NFP that earns income from activities not substantially related to (that is, activities that do not contribute importantly to) its charitable purposes is also usually required to report that income to the IRS and pay income taxes on it. This type of income is known as unrelated business taxable income – or UBTI – and is discussed further in Section III.D below.

Any NFP with employees must make certain filings that document wages paid to employees over the course of the year and withheld by the NFP. For a worker classified as an “employee,” the NFP is required to file a Form W-2. For a worker classified as an “independent contractor,” the NFP is required to file Form 1099 if it paid the independent contractor more than \$600 in the year. The separate Employment Issues Guide also published by the LP discusses the employer withholding and filing requirements in greater detail.

C. Illinois State Tax Filings

Illinois’ tax exemption rules for NFPs closely track the federal rules. Under Illinois tax law, an NFP that is exempt from federal income taxes is also considered exempt from Illinois income taxes. However, the Illinois Department of Revenue does not require an annual tax filing unless the NFP is required to file an annual return with the IRS other than Form 990, Form 990-EZ or Form 990-N. If an NFP is required to pay taxes to the federal government on UBTI (discussed in the next section), or for any other reason, and

the income is otherwise taxable by the state of Illinois, the NFP is required to file Form IL-990-T with the Illinois Department of Revenue.

In addition to Illinois state requirements, NFPs operating or soliciting donations outside of Illinois may also be required to make filings in other states. Any NFP operating outside Illinois should consult with an experienced accountant or tax attorney to determine whether additional filings are necessary in the other states of operation.

D. Unrelated Business Taxable Income (UBTI)

An NFP's exemption from federal income tax generally is limited to income earned by the organization while performing activities related to its tax-exempt purposes. If the NFP earns income from an unrelated (often commercial) activity that is regularly carried on and is not substantially related to the organization's tax-exempt purpose, then that income will be subject to federal income tax as UBTI unless an exception applies.

An NFP that realizes UBTI must file IRS Form 990-T if the gross income from the unrelated business is \$1,000 or more in any year and must pay income tax on the amount determined to be UBTI (i.e., the unrelated trade or business income less deductions associated with that income) at the applicable corporate or trust income tax rates. Filing IRS Form 990-T may also trigger state tax filings such as the Illinois Form IL-990-T filing discussed above. Furthermore, substantial unrelated, nonexempt activity by an organization could jeopardize its tax-exempt status.

Determining whether certain income is UBTI is specific to an organization and its tax-exempt purposes. In fact, certain types of unrelated income may be excepted from unrelated business income taxes—e.g. passive investment income, income from volunteer-run activities or the resale of donated items. IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations (available at www.irs.gov/formspubs), provides greater detail on this topic; however, if UBTI might be an issue, an NFP should contact an experienced tax lawyer or accountant.

Example:

Suppose an NFP that runs an after school program for disadvantaged teenagers living in high crime areas starts a business selling t-shirts designed by the participants in its program. The participants will learn about running a business and acquire business skills. Even though the shirts will be made and sold to make a profit, the revenues from the shirt sales may not be UBTI because teaching the teenagers about running a business and acquiring business skills is substantially related to the purpose of the organization.

E. Maintaining and Updating Corporate Records

1. Written Records and Record Retention

In managing the operations of an NFP, its board of directors should ensure that procedures are established to record, maintain and store various written documents in a safe and secure location. Creating written records and organizing the resulting paperwork may seem cumbersome and time-consuming, but written records are necessary to create the legal identity of the NFP, to set forth its mission and to document decision-making by the board. If the directors do not cause the NFP to maintain a separate corporate identity, directors and officers could be held personally liable for actions they thought they were taking on behalf of the NFP. Illinois law also requires NFPs to keep accurate books and records which must be made available for inspection if requested by the Illinois Attorney General. Additionally, federal law requires an NFP to make many of its federal tax records available for public inspection on demand. Keeping track of these documents is an ongoing responsibility that the NFP's board must take very seriously.

Some of the NFP's records, such as its articles of incorporation and bylaws, may not change very often, so retaining these records is relatively easy. The NFP should create a filing system where it keeps its important permanent records. Many NFPs use a three-ring binder with tabs for the documents listed below.

1. Articles of Incorporation;
2. Bylaws;
3. Tax records, including its IRS Form 1023, exemption determination letter, and IRS Forms 990 and 941 (employee tax);
4. The Charitable Organization Registration Statement (Form CO-1) filed with the Illinois Attorney General and the registration acknowledgement letter from the Illinois Attorney General;
5. Charters for committees of the board of directors;
6. Minutes from meetings, board resolutions and unanimous written consents of the board of directors and committees of the board; and
7. Policies and procedures, such as a written conflict of interest policy, whistleblower policy, document retention policy, etc.



Furthermore, the ongoing operations of the NFP will generate other important corporate records such as banking records and regulatory filings with various state and federal agencies. Keeping and organizing copies of these documents will make it easier

to find key documents when they are needed. Examples of these documents include those listed below.

1. Annual filings with federal, state and local government agencies, including copies of Form AG990-IL;
2. Monthly bank statements and other accounting records, including payroll records and records of all contributions and donations; and
3. Miscellaneous other important documents such as employment agreements with key employees.

Over time, maintaining copies of many out-of-date documents may become unmanageable. Many organizations create formal policies known as “document destruction” or “record retention policies” describing the organization’s policies for retaining certain kinds of documents. IRS Form 990 specifically asks if the organization has a written document retention policy. A document retention policy requires certain documents to be stored for a certain period of time and may also require the destruction of documents after a certain period of time.



When creating a policy, NFPs should keep in mind that some types of documents must be retained under the law for a specified period of time. Additionally, it is important that any document retention policy provide that documents are not to be destroyed if the NFP suspects or is aware that the documents are the subject of pending litigation or official investigations. Generally, it is a crime to destroy documents related to litigation and investigations. In such an event, organizations should suspend their normal document retention policies if the policies would call for the destruction of these documents.

Detailed guidelines for document retention are beyond the scope of this General Compliance Guide, and an NFP should review the rules related to retaining various documents before implementing a document retention policy.

2. Changes to Organization Documents

When it was formed, an NFP’s articles of incorporation should have been filed with the Illinois Secretary of State to become effective, and then should have been recorded with the recorder of deeds in the county where the NFP’s registered agent is located. In addition, both the NFP’s articles of incorporation and its bylaws (among other documents) should have been filed with the IRS as attachments to the Form 1023 – Application for Recognition of Exemption and with the Illinois Attorney General as attachments to Form CO-1, Charitable Organization Registration Statement (see below).

If the NFP amends its articles of incorporation, it will need to file the amendment with the Illinois Secretary of State and have the amendment recorded with the recorder of deeds in the county where the NFP’s registered agent is located. The NFP must notify

the Secretary of State of any change in its registered agent or registered office using Form NFP 105.10/105.20. The dissolution of the NFP must be filed with the Secretary of State using articles of dissolution. If the NFP is registered with the Charitable Trust Division of the Illinois Attorney General (almost all NFPs operating in Illinois are required to be registered), then changes to an NFP's articles of incorporation and other organizational documents must also be reported to the Illinois Attorney General.

In addition to the required filings with the Secretary of State, county recorder and Illinois Attorney General, any change to the NFP's organizational documents that might significantly affect the purpose or business activities of the NFP must also be submitted to the IRS for a determination of whether the changes may impact the NFP's tax exemption. The IRS only grants tax exemption to NFPs serving certain purposes. Because an NFP's tax exemption is based in part on the provisions of its organizational document, even seemingly small changes to the documents could affect the exemption. The potential effects on the NFP's tax exemption should always be reviewed when any of the organizational documents are amended, including changes to the article of incorporation, bylaws, changes resulting from a merger, or any other major alterations that could affect the purpose or business activities of the NFP. Attention to these governing documents is important for on-going compliance, organizational effectiveness, and the board of directors' fulfillment of its fiduciary duties. It is also important to understand that the obligation to file amended articles of incorporation and the obligation to file the annual reports are independent from each other, and filing amended articles does not change the requirement to file an annual report every year.

F. Registrations Required for Soliciting Donations

1. Illinois Attorney General Filing

An NFP operating in Illinois is generally required to register with the Attorney General when it is formed using Attorney General Form CO-1. Once registered, an NFP must file an annual financial report about the organization with the Illinois Attorney General's office. This filing is made on Form AG990-IL – Annual Financial Report, and it must be filed each year within six months after the end of the NFP's accounting period.

The Illinois Attorney General's office maintains a database of all NFPs that have filed Form AG990-IL on time. Form AG990-IL is a public document which may be searched and viewed by potential donors from the Illinois Attorney General's website. If an NFP does not file its Annual Financial Report on time (or a request for extension of the filing deadline), its registration will be cancelled and it will be removed from the database. If an NFP files Form AG990-IL late (without obtaining an extension of its filing deadline) it must pay an additional filing fee. In addition to such late fees, if an NFP does not comply with the Attorney General filing requirements within the required time limits, the Attorney General may bring a court action to collect the assets of the NFP and redistribute them for other charitable purposes.

The registration form, annual report and filing instructions can be obtained from the Illinois Attorney General's website at: www.illinoisattorneygeneral.gov/charities/register_report.html. NFPs using paid professional fundraisers will be required to file additional documentation.

2. Internet Solicitations

Any NFP soliciting donations over the Internet may need to comply with registration requirements in numerous states. If a state has not provided an exception for Internet solicitations, any general state laws requiring registration prior to charitable solicitation may also apply to Internet solicitations.



For example, the law requiring NFPs that solicit donations in Illinois to register with the Illinois Attorney General does not differentiate between donations solicited by the use of the Internet, a telephone or other electronic means.

In 2000, an association made up of the states' attorneys general of all 50 states, in conjunction with a group of state charity officials, drafted guidance known as the "Charleston Principles" to formally express the views of these organizations regarding Internet solicitations. The Charleston Principles state that a website that passively informs visitors about an organization and its fundraising would not typically trigger registration requirements by itself. However, websites that accept online donations can be more problematic if they could be deemed to target residents in a specific state, or if repeated, ongoing donations are arriving from a certain state as a result of the website. It is important to note that these Charleston Principles have **not** been adopted as the law of any state. The Charleston Principles represent the views of the organizations that drafted them, and are not binding on any particular state attorney general. Any NFP seeking to solicit donations over the Internet should seek professional advice from a lawyer in this area. See the Resource Guide for information about Illinois Attorney General registration requirements, Internet solicitation, and multi-state solicitation.

G. Ongoing Illinois Secretary of State Filing Requirements

In addition to filing the annual financial report with the Illinois Attorney General, Illinois law also requires every NFP organized or doing business in Illinois to file an annual report with the Illinois Secretary of State. The purpose of the Secretary of State filing is to provide Illinois with an update of the NFP's name, address, directors and business activities. If the NFP's information has not changed since the prior year, the information on this form will be very similar to the prior year's form. If the NFP has changed its address, appointed new officers or directors, or otherwise changed its structure, this annual report informs the Secretary of State of the changes. The annual report is generally required to be filed with the Secretary of State prior to the first day of the anniversary month of the NFP's date of incorporation. For example, if the NFP was incorporated on July 18, 2008, the annual report deadline is June 30 of each subsequent

year. The Illinois Secretary of State will send the form for the annual report, also known as Form C 54.24, to the NFP's registered agent at the address on file approximately 60 days before the due date each year.

Failure to file the annual report on time causes a penalty to be assessed against the NFP and is grounds for the dissolution of the NFP by the Secretary of State. If the report is not filed by the deadline, the Illinois Secretary of State will send a notice to the NFP's registered office. If the NFP does not file the report within 90 days following the notice, the NFP will be dissolved automatically by the Illinois Secretary of State. Once dissolved, an NFP ceases to exist for all legal purposes and cannot continue to operate. To restore its legal existence, the NFP must file the late report(s), pay any fees or penalties owed to the Illinois Secretary of State and file articles of reinstatement.

It is important to understand that the obligation to file amended articles of incorporation and the obligation to file the annual reports are independent from each other, and filing amended articles does not change the requirement to file an annual report every year.

H. Ongoing Employee Filing and Withholding Requirements

The exemption from an NFP's obligation to pay taxes on its income does not affect the requirement that its employees pay taxes on their income. Because the IRS administers the collection of employee income and employment taxes by requiring employers to withhold taxes at the time that wages are paid, part of the responsibility for the payment of an employee's income taxes falls on the employer. Based on information provided by an employee on Form W-4, the IRS will require that a certain portion of the employee's income be withheld by the employer and paid to the IRS. The Illinois Department of Revenue requires a similar payment for each employee's Illinois state income taxes.

If the NFP fails to pay its own FICA taxes or the taxes withheld on behalf of the NFP's employees to the IRS, the IRS may hold the NFP's board of directors personally liable for these taxes. This personal liability is not covered under most insurance policies. Therefore, it is extremely important that an NFP complies with state and federal filing and withholding requirements. For more information about this important topic, please refer to the separate Employment Issues Guide.

I. Public Disclosure Requirements

NFPs that are described in Code Section 501(c)(3) are required to make certain information available to the public upon request. Copies of an NFP's Form 1023, Application for Recognition of Exemption; Form 990, Form 990-EZ, or Form 990-N; and Form 990-T (if applicable) must be provided to donors or members of the public upon request. The Form 990, Form 990-EZ, Form 990-N, and Form 990-T must be made

publicly-available for three years after the later of the date it was filed or the date it was due (including extensions). The Form 1023 always remains subject to public inspection.

J. Political Activity and Lobbying

The restrictions on the lobbying and political campaign activity of tax-exempt organizations' are rather complex and, therefore, cannot be covered in full here. The following discussion aims to provide you and your organization with the general structure of these restrictions. Your organization should seek the assistance of an attorney where lobbying and political campaign issues arise.

1. Political Activity



Section 501(c)(3) of the Code prohibits tax-exempt organizations from intervening on behalf of, or in opposition to, candidates for local, state or national office. If an NFP violates this rule, it may be subject to an excise tax on the amount spent on the campaign activity and the IRS may seek to revoke its tax-exempt status. An NFP may, however, engage in non-partisan voter education activities without jeopardizing its tax-

exemption. Further, this prohibition does not restrict an NFP's employees', officers' and directors' involvement in political activity as private individuals. Distinguishing between permissible and impermissible activities therefore represents an extremely important task for all NFPs that might engage in these activities. All employees, officers and directors of an NFP should know about this prohibition, understand the severity of violating it and be encouraged to ask the NFP's management or board if they have questions regarding whether certain political activity could be attributed to the NFP.

IRS Revenue Ruling 2007-41, available at <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>, provides important guidance to Section 501(c)(3) organizations regarding political campaign activity. First, it provides an overview of the rules regarding political activity, defines key terms such as "candidate" and "voter education", and references prior Revenue Rulings addressing candidate questionnaires and other matters. Second, it presents and analyzes twenty-one factual examples, each of which involves an exempt organization described in Section 501(c)(3) of the Code sponsoring or participating in various non-partisan or political activities.

The information and factual analyses contained in Revenue Ruling 2007-41 may provide helpful guidance to NFPs as they navigate the boundary between permissible activity and impermissible political activity, but NFPs should keep in mind that a determination of whether a particular activity is prohibited requires a detailed analysis of all the facts and circumstances. Accordingly, careful consideration of all proposed activities is required in every circumstance that might involve a risk of campaign intervention. NFPs should consult with qualified legal counsel where appropriate.

2. Lobbying

NFPs classified as public charities are allowed to conduct and fund lobbying activities up to certain allowable limits. “Lobbying” for these purposes generally includes (a) communicating with elected officials or their staffs about specific legislation, (b) communicating with government officials who will participate in formulating the legislation that is the subject of the communication, or (c) communicating with the general public if the communication refers to and expresses a view on specific legislation and encourages the public to take action. Certain activities do not count as “lobbying” for these purposes, including the following:

- Influencing non-legislative action (i.e. communications with government employees that are not covered under items (a) or (b) above);
- Educational non-partisan analysis, study, or research;
- Examinations and discussions of broad social, economic, and similar problems;
- Technical advice or assistance in response to a written request from the governmental body or committee; and
- “Self-defense” communications (i.e. communications with any legislative body with respect to a possible action by the body that might affect the NFP’s existence, powers, duties, tax-exempt status, or deductibility of contributions to the NFP).

The general rule is that lobbying must be an “insubstantial part” of the NFP’s activities. Two tests are available to determine whether an NFP is in violation of this lobbying limitation. The subjective test is based on all the facts and circumstances of the NFP’s activities, and is often difficult to use for planning purposes. Alternatively, Section 501(h) of the Code provides some NFPs an alternative whereby they may elect, through filing Form 5768, to use bright-line rules to determine if lobbying constitutes a substantial part of the organization’s activities. This election—often referred to as a “Section (h) election”—may provide an NFP with more clarity and direction in planning its lobbying activities, and allows the NFP to conduct and fund a certain amount of lobbying activity each year. Because the correct test for any particular organization will vary according to the organization’s specific circumstances and because the determination of whether an activity constitutes lobbying or falls within an exception that involves a careful facts and circumstances analysis, qualified legal counsel should be consulted where appropriate in making these determinations. For more general information see the listing in the Resource Guide for the Alliance for Justice.

K. Organization Governing Policies

Many boards of directors adopt a variety of governing policies to assist the NFP in its operations. Governing policies address matters discussed above, such as conflicts of interest, record retention, and compensation, and typically are designed to enable the

board of directors to meet its fiduciary responsibilities and its requirements under the Code. Further, the revised Form 990 (discussed in Section III.B) now requires an NFP to report on its governance and operating policies. Not all policies may be appropriate for each NFP. NFPs instead must make a considered decision regarding whether or not they should adopt a particular policy. If an NFP finds that a specific policy would be appropriate, then the organization should consult with a qualified attorney to prepare a written policy that is tailored to the specific needs of the organization. The following is a list of some of the more common governing policies that NFPs adopt:

Governing Policy	Policy Descriptions and Disclosure Under IRS Form 990
Conflict of Interest Policy	Conflicts of interest policies and annual disclosures are discussed in more detail in Section II.A above. The revised Form 990 specifically asks whether the filing organization has a written conflict of interest policy.
Whistleblower Policy	Whistleblower issues and potential penalties are discussed in more detail in the separate Employment Issues Guide also published by the LP. The revised Form 990 specifically asks whether the filing organization has a written whistleblower policy.
Written Document Retention and Destruction Policy	These policies are discussed in Section III.E.
Compensation Review Procedures	The revised Form 990 requests information regarding the procedures the organization uses to establish compensation for its officers and certain key employees. These issues are discussed in Section II.B.
Expense Reimbursement Policy	Schedule J to the revised Form 990 requires specific information regarding compensation and reimbursements paid by an NFP to certain of its officers, directors, trustees, key employees, and highest-compensated employees and inquires whether such payments are made pursuant to a written expense reimbursement policy.
Gift Acceptance Policy	Schedule M of the revised Form 990 asks if the organization has a gift acceptance policy that requires the review of any non-standard contribution. Generally, a “non-standard contribution” is an item that is not expected to be used by the organization in its charitable operations and which is not readily convertible to cash, making the item’s value difficult to ascertain. A non-standard contribution might include investment real property or interests in a closely held business. If an NFP intends to or does accept such non-standard contributions it should consult with its lawyers to develop an appropriate gift acceptance policy.
U.S. Grant Procedures	Schedule I of the revised Form 990 requires certain information regarding the organization’s record keeping practices with respect to grants it makes to U.S. organizations and individuals.
Foreign Grant Procedures	Schedule F of the revised Form 990 requests certain information regarding an organization’s policies and procedures with respect to non-U.S. grant-making activities.

IV. DIRECTOR PROTECTIONS FROM PERSONAL LIABILITY

As described in the prior sections of this General Compliance Guide, operating an NFP within the boundaries of all of the various federal and state laws involves a great deal of work, whether the organization is large or small. Directors are given a lot of responsibility, and doing the job well requires knowledge of the NFP's operations as well as strong organizational skills. With all of the legal responsibilities and duties required of a director, one may wonder why anyone would choose to take on the job. However, most NFP directors who take their jobs seriously and devote a reasonable amount of attention to their responsibilities will have no trouble fulfilling their duties. In fact, there are several specific rules designed to encourage involvement on NFP boards and to protect directors from personal liability.

A. Exercise of Business Judgment

Courts have consistently recognized that directors should not be held personally responsible for causing harm to their organizations if their decisions were made in good faith and their fiduciary duties were being met. A doctrine known as the "business judgment rule" recognizes that many business decisions involve some level of risk and just because a decision is eventually shown to be harmful for an organization does not mean the director intended the harmful outcome or that the decision was the wrong decision at the time it was made. In order to be protected by this legal doctrine, directors of NFPs must show that they made a reasonable effort to learn about and understand the risks involved in making a business decision in good faith, did not have any conflicts of interest that could impact their judgment, and made a decision they believed would be in the best interests of the organization. If directors are satisfying their fiduciary duty of care (as discussed in Section II.A.2) and are exercising prudent business judgment, then those directors most likely will be protected from personal liability for actions of the board.

B. Immunity

Illinois law provides special protection to directors who serve on NFP boards without compensation as directors (it is possible that directors may be compensated in another, non-director capacity). Uncompensated directors of NFPs cannot be liable for their acts (or failures to act) as directors unless the acts involved willful or wanton conduct. In other words, to be held personally liable for a decision, an uncompensated director must have acted (or failed to act) with the knowledge and intention that the act would bring about harm to the NFP. If an uncompensated director approves an action of the NFP that later results in unintended harm, the law protects the director from being held liable for approving the action as long as he or she did not act willfully or wantonly.

C. Indemnification

Each NFP can also create its own protection for its directors. The NFP can agree to indemnify directors for liabilities associated with serving as a director for the NFP. The NFP can also agree to advance directors the legal costs directors incur while defending themselves against a lawsuit or other legal threat. It is common for a lawsuit against any type of organization to also individually name the people running the organization as additional defendants. Advancement of expenses means that the NFP will use its organizational funds to pay for the cost of defending directors' personal liability so that directors are not required to use personal funds to defend against lawsuits arising from their work as directors. Indemnification means that if a director is found liable, under most circumstances the NFP will reimburse the director for payments made to satisfy the liability. In order to qualify for indemnification, the NFP must find that the director or officer acted in good faith and in a manner he or she believed to be in the best interests of the NFP and, with respect to a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful. In general, this determination must be made by a majority vote of the directors who are not a party to the action.

It should be noted that under the Illinois Not for Profit Corporation Act, an NFP is permitted but is not required to offer the indemnification described above. Many NFPs choose to include indemnification provisions in their bylaws. Some include provisions which state that the organization **may** indemnify its directors and officers to the fullest extent permitted by Illinois law. This allows the organization some flexibility in deciding whether to indemnify a director or officer for a particular claim. However, others include provisions which state that the organization **must** indemnify its directors and officers to the fullest extent permitted by Illinois law. Such a provision would require the NFP to indemnify its directors and officers.

To ensure that an NFP can fund a potential indemnity claim, the NFP can purchase director and officer insurance. This type of insurance policy is common and is available from various insurance companies. Agreeing to indemnify directors without purchasing insurance creates a risk that the NFP itself will have to pay for the legal defense of its directors if a lawsuit arises. However, providing director indemnification may help an NFP attract the best people to serve on its board because it provides some assurance that a director is not putting his or her personal assets at risk.

It is important to note that the above analysis does not apply to certain organizational actions such as failure to pay FICA withholding taxes. For a more thorough discussion of the potential employment-related liabilities, see the separate Employment Issues Guide.

V. CONCLUSION

This General Compliance Guide is intended to provide information that is generally applicable to most NFPs. The table at the end of this General Compliance Guide lists additional resources that will be useful. As this General Compliance Guide

demonstrates, NFPs and their boards of directors are affected by numerous corporate, tax, employment, regulatory and other laws that are constantly changing. Consequently, it is imperative that someone familiar with the NFP – whether an employee, accountant, lawyer or other professional – keep abreast of changes in the law. If you are interested in obtaining more information on how an NFP can stay compliant with ever-changing laws, or have specific questions relating to the information contained in this General Compliance Guide, please contact THE LP using the information provided in the inside cover of this General Compliance Guide.

VI. SUMMARY TABLE OF FILINGS AND REGULAR RESPONSIBILITIES

Document	Filing Time/ Frequency/Agency	Purpose
General Corporate Records		
Articles of Incorporation	Filed with the IL Secretary of State at the time of incorporation and for any amendment and filed with the IL Attorney General at the time of Charitable Registration and for any amendment. Also filed with the IRS.	Provides information about the NFP required by IL law and creates public record of the existence of the NFP.
Bylaws	Filed with the IL Attorney General at the time of Charitable Registration and for any amendment. Also filed with the IRS.	Sets forth rules controlling the way in which the NFP will operate.
Minutes of Board of Directors Meetings	Not filed, frequency of documentation varies.	Records activities of the board of directors.
Unanimous Written Consents	Not filed, frequency of documentation varies.	Serves the same purpose as a meeting of the board of directors, but without an actual meeting. Written consents must be signed by all members of the board of directors.
NFP 105.10/105.20—Statement of Change of Registered Agent and/or Registered Office	Filed with the IL Secretary of State upon a change of registered agent or registered office.	Notifies IL Secretary of State of any change in registered agent or registered office.
AG990-IL—IL Charitable Organization Annual Report	Filed with the IL Attorney General annually—within 6 months of accounting year end.	Informs IL Attorney General of NFP's financial condition .
C 54.24—IL Secretary of State Not-for-Profit Annual Report	Filed with the IL Secretary of State annually—prior to the first day of the anniversary month of the NFP's date of incorporation.	Updates the IL Secretary of State regarding an NFP's name, address, officers, and other basic information.
Taxes		
Form 1023—Application for Recognition of Exemption	Filed with IRS soon after incorporation.	Apply for federal tax exemption.
Form 990, Form 990-EZ or Form 990-N—Return of Organization Exempt from Income Tax	Filed with IRS annually, due 15th day of 5th month after accounting year ends.	Reports financial information to the IRS.
Form 8868—Application for Extension of Time to File an Exempt Organization Return	Optional filing with the IRS ; must be filed by 15th day of 5th month after accounting year ends.	Requests additional time to complete tax return.
Form 990-T—Exempt Organization Business Income Tax Return	Filed with IRS annually or quarterly depending on circumstances.	Reports UBTI of the NFP to the IRS.

Document	Filing Time/ Frequency/Agency	Purpose
Form IL-990-T—IL Exempt Organization Income and Replacement Tax Return	Filed with IL Department of Revenue annually or quarterly depending on circumstances (same timing requirement as Form 990-T).	Reports UBTI of the NFP to IL Department of Revenue.
Form 941—Employer's Quarterly Federal Tax Return	Filed quarterly with the IRS.	Reports number of employees and amount of employee withholdings for FICA and federal income taxes.
Form 941-IL—IL Quarterly Withholding Income Tax Return	Filed quarterly with the IL Department of Revenue.	Reports amount of employee withholdings for IL state income taxes.
Form W-4	Completed by each employee at the beginning of employment. May be filed with the IRS.	Provides the NFP and the IRS with the information necessary to determine the appropriate level of withholding for the employee's income taxes.
Form W-2—Wage and Tax Statement	Filed annually with the IRS on or before February 28 (or March 31 if filed electronically), and furnished to each employee on or before January 31 for the preceding calendar year.	Reports wages paid and taxes withheld.
Form W-3—Transmittal of Wage and Tax Statements	Filed annually with the IRS on or before February 28 (or March 31 if filed electronically) for the preceding calendar year.	Cover page for the transmittal of Forms W-2 to the IRS.
Form 5768—Election/Revocation of Election by Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation	Filed with the IRS if engaging or terminating lobbying activities.	Informs IRS of election regarding expenditures to influence legislation.
Form 8283—Noncash Charitable Contributions	Filed by donor with respect to certain noncash charitable contributions.	Provides the IRS with information regarding a donor's noncash charitable contribution.
Form 8282—Donee Information Return	Filed with the IRS if an NFP disposes of a noncash charitable contribution within three years of the donation.	Provides the IRS with information if an NFP disposes of a noncash charitable contribution.

VII. RESOURCES GUIDE

- “A Guide for Organizing Not-for-Profit Corporations” – Illinois Secretary of State. Available at:
www.cyberdriveillinois.com/departments/business_services/publications_and_forms/nfp.html
- “Compliance Guide for 501(c)(3) Public Charities: Publication 4221-PC” – Internal Revenue Service. Available at: www.irs.gov/pub/irs-pdf/p4221pc.pdf
- “Tax-Exempt Status for Your Organization: Publication 557” – Internal Revenue Service. Available at: www.irs.gov/pub/irs-pdf/p557.pdf
- “Charitable Contributions: Publication 526” – Internal Revenue Service. Available at: www.irs.ustreas.gov/pub/irs-pdf/p526.pdf
- “Charitable Contributions, Substantiation and Disclosure Requirements: Publication 1771” – Internal Revenue Service. Available at: www.irs.ustreas.gov/pub/irs-pdf/p1771.pdf
- “Stay Exempt – Tax Basics for Exempt Organizations” – Internal Revenue Service. Available at: www.stayexempt.org.
- “Tax on Unrelated Business Income of Exempt Organizations: Publication 598” – Internal Revenue Service. Available at: www.irs.ustreas.gov/pub/irs-pdf/p598.pdf
- “Annual Reporting Requirements for Charitable Organizations” – Illinois Attorney General. Available at: www.illinoisattorneygeneral.gov/charities/annual_reporting_requirements.html
- “Building Better Charities” – Illinois Attorney General. Available at: www.illinoisattorneygeneral.gov/charities/reg_reports.html
- “The Charleston Principles: Guidelines on Charitable Solicitations Using the Internet” – National Association of State Charity Officials. Available at: www.nasconet.org/Charleston%20Principles,%20Final.pdf/file_view
- “About Advocacy: Lobbying” – Alliance for Justice. Available at: www.afj.org/for-nonprofits-foundations/resources-and-publications/about-advocacy-lobbying.html

The following government organizations and departments may also be able to provide more information about their rules and requirements:

ILLINOIS SECRETARY OF STATE www.cyberdriveillinois.com	
Secretary of State Department of Business Services Corporations Division 350 Howlett Building Springfield, IL 62756 217-782-6961	Secretary of State Department of Business Services Corporations Division 69 W. Washington, Ste. 1240 Chicago, IL 60602 312-793-3380
ILLINOIS DEPARTMENT OF REVENUE www.revenue.state.il.us/	
Department of Revenue Income Tax Division 101 W. Jefferson Springfield, IL 62708 800-732-8866	Department of Revenue Income Tax Division 100 W. Randolph Chicago, IL 60601 800-732-8866
Department of Revenue Sales Tax Division 101 W. Jefferson Springfield, IL 62708 800-732-8866	Department of Revenue Sales Tax Division 100 W. Randolph Chicago, IL 60601 800-732-8866
ILLINOIS ATTORNEY GENERAL http://www.illinoisattorneygeneral.gov/charities/index.html	
Illinois Attorney General Division of Charitable Trust and Solicitations 100 W. Randolph, 12th Fl. Chicago, IL 60601 312-814-2595	
U.S. INTERNAL REVENUE SERVICE (Street addresses for form pick-up only) http://www.irs.ustreas.gov/proc/	
Internal Revenue Service 320 W. Washington, Rm. 611 Springfield, IL 62703	Internal Revenue Service 230 S. Dearborn Chicago, IL 60609 Attn: Forms Services 800-829-3676

The following resources are available directly from Community Economic Development Law Project and may be downloaded at www.thelawproject.org (unless otherwise noted below):

- *Tax Issues for Exempt Organizations, A Primer*, By Paula Cozzi Goedert, Barnes & Thornburg, LLP 30pp. An introduction to the topics of “related” and “unrelated” business income. (Only available by mail. You will be asked to pay postage costs for orders requiring extra postage.)
- *Introduction to Board of Directors Meetings for Emerging Not-for-Profit Illinois Corporations*. 45pp. A guide with information to help directors run their meetings and take care of the corporation’s business in an efficient and productive manner. 2007
- *Sales Tax Exemption for Illinois Not-for-Profit Organizations*. April 2006
- *Maybe It’s Time to Incorporate: Various Issues for Community Groups to Consider Before Consulting an Attorney*. 28pp. February 2007
- *How Do I Create a Non-Profit Corporation? A Step-by-step guide to obtaining recognition of income tax exemption*. Updated 2007
- *Is NPO the Way to Go? Explore the differences between a not-for-profit and a for-profit*. 2005
- *FAQ on Fiscal Sponsorship*. Information about partnering with an existing tax-exempt organization before obtaining tax exemption. 2007
- *Not For Profit Corporations: Understanding Board Composition*. Who the players are in a nonprofit organization. 2007
- *Bylaws Fact Sheet*. The purpose of bylaws. 2007
- *Obtaining 501(c)(3) Status for Economic Development Organizations: A Guide for Attorneys*. November 2008