



August 2009

### Has Your Board Reviewed the New Form 990?

Embodied in almost every state's not-for-profit corporation law is the requirement that board members adhere to the duties of care, obedience and loyalty in carrying out their fiduciary responsibilities. These duties include, among other things, being aware of and understanding the general activities and operations of their organization and overseeing its compliance with the legal environment in which it operates.

With its genesis in the scandals of the 1990's and earlier this decade, public interest in the proper exercise of good business and governance practices at charitable organizations has risen dramatically. Nothing exhibits this more than the added disclosure requirements of the new Form 990, the annual information return required for not-for-profit organizations. Of particular interest is a new disclosure requirement to describe the organization's process for reviewing Form 990 which should include a board's review prior to its issuance.

Historically, the preparation and execution of Form 990 was deemed a management function. For most, it was looked upon as a compliance exercise to maintain the organization's tax exempt status. While the public disclosure rules that require organizations to provide copies of annual returns to anyone who requests them have been in place for many years, the appearance of Guidestar and other internet based research tools has significantly increased the visibility and public use of Form 990. This, plus the significant new required disclosures about the operations, accomplishments and governance policies of the reporting organization, has necessitated a much more robust internal review process for the return prior to filing. It is therefore even more important today that the members of the board of the organization participate in this process as part of their fiduciary duty.

The following is an example of the principal steps that an organization might consider taking.

**Planning and Preparation** - Have a planning session prior to year end with management, outside tax preparers (if appropriate) and a representative from the organization's board to review Form 990. Inventory all narratives required, confirm governance policies in place, assign writing and editing tasks and data gathering duties, and set calendar and deadlines.

**Management Review** – Once drafted, perform a detailed review by executive management, including (as appropriate) fundraising, communications and marketing, finance and outside legal counsel. Be sure to review the organization's website, marketing and fundraising materials for consistency with data in the return.

**Board Committee Review** – Review a draft of the completed return with a designated committee of the board such as the Executive, Audit or Finance Committee.

**Board Review** – Provide the board as a whole a brief but reasonable time to comment. Approve Form 990 for submission at next board or Executive Committee meeting.

It is important to remember that no two organizations are identical and thus the annual board review process of Form 990 appropriate for one organization may not be for another. Accordingly, as you consider your review procedure, take into account your own governance structure and organizational and operational circumstances.

If you would like more information about the new Form 990 and how to tailor a practical board review process for your organization, contact Garrett Higgins at 914-421-5600 or [ghiggins@odmd.com](mailto:ghiggins@odmd.com) or your ODMD Not-for-Profit Team professional.

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New York, NY  
212.286.2600

Harrison, NY  
914.381.8900

White Plains, NY  
914.421.5600

Paramus, NJ  
201.712.9800

Stamford, CT  
203.323.2400

ODMD.com