

# NOT-FOR-PROFIT INSIDER

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## Nonprofits Excluded from FASBs Proposed Definition of a Public Business Entity

In August 2013, the Financial Accounting Standards Board (“FASB”) issued an exposure draft defining public business entities. Under this proposal, nonprofit entities and employee benefit plans would be excluded from the definition of public business entities.

Currently, there are multiple definitions of the terms “nonpublic entity” and “public entity” within FASBs Accounting Standards Codification (“ASC”) that were established to address specific types of issues over the years, which includes differences in accounting or disclosure requirements and different effective dates. As a result, FASB has received

feedback from stakeholders requesting clarification of the existing definitions and ongoing questions about which definition of a nonpublic entity was used in various projects.

The new proposed definition of public business entities will not supersede any existing definitions for similar entities in the current ASC. FASB has indicated implications of superseding existing definitions that need to be further evaluated and analysis may be performed. However, the intention is that FASB would consistently use the newly proposed definition of a public business entity in future standard-

setting activities. Under this proposal, there would be no distinction between public and nonpublic nonprofits. Instead, FASB will determine, on a standard-by-standard basis, which nonprofits, if any, will be eligible for alternatives within GAAP.

Nonprofit entities and employee benefit plans that will fall within the scope of this proposal, and therefore would be excluded from the definition of public business entities, could have an issue if they currently have conduit debt. If the proposal is accepted, nonprofit organizations with conduit debt would have to follow public company guidance for previously issued standards, but would follow private company guidance for any standards created after the new definition takes effect. As of October 30, 2013, the board is in the process of reviewing all comments.



Article written  
by Justin Forster,  
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## Proposed Regulatory Changes For Nonprofits Receiving Federal Funding



The Office of Management and Budget (OMB) has issued proposed changes in its requirements for audits of entities receiving federal funds (OMB A-133), as well as consolidating several existing OMB Circulars related to cost principles and administrative requirements for state and local governments and nonprofit entities receiving federal funds. If adopted, these changes will provide smaller nonprofit entities with some relief from the requirement to have a Single Audit and make significant changes in the focus of the Single Audit procedures when they are required.

The changes proposed to the Single Audit provisions include:

1. Increase to \$750,000 (from \$500,000) the threshold for which a Single Audit would be required. Grantees would still be required to maintain records for audit or review by oversight agencies if necessary.
2. Revisions to the methodology of determining which programs are considered Type A or Type B and the criteria for determining high risk programs. Minimum thresholds for Type A programs would be increased to \$500,000 (from \$300,000). Type A high-risk programs would generally be those which had a material weakness in internal control, questioned costs of 5% or more or a qualified opinion in the prior period.
3. Amounts required to be covered under the Single Audit would be reduced to 40% (from 50%) for most entities and to 20% (from 25%) for low-risk entities.
4. The types of compliance requirements to be tested would be reduced from 14 to 6. The elements to be tested would be detailed in revised Compliance Supplements and would include:
  - a. Activities allowed or unallowable (which could include matching and period of availability of funds)
  - b. Cash management
  - c. Eligibility
  - d. Reporting
  - e. Monitoring of subrecipients
  - f. Special test and provisions
5. More detail will be required on findings and questioned costs, however, the questioned costs level would be increased to \$25,000 from the current \$10,000.

The proposed changes would also consolidate eight OMB Circulars into one document with the goal of streamlining cost principles and administrative requirements and eliminating differences in guidance among different users. The current guidance has separate cost principles for educational institutions, state and local government entities and nonprofit entities with a different structure and some language differences, which can create confusion for grantees and regulators in administering programs. There are also proposed changes to indirect cost allocations and documentation, which nonprofits need to consider in developing indirect cost rates.

The proposed guidance as well as several other helpful documents to analyze the proposed changes is available at [http://www.whitehouse.gov/omb/grants\\_docs#proposed](http://www.whitehouse.gov/omb/grants_docs#proposed). The comment period closed on May 2, 2013.



Article written by Marilyn Pendergast, Partner

## Simple Governance Steps for Nonprofits



Most nonprofit organizations focus their energy and resources on a dedicated cause. This can sometimes lead to ignoring basic policies related to governance that can strengthen the organization without significant costs.

Boards of nonprofits should consider their role in establishing policies and overseeing management's implementation where appropriate.

**Review the size and structure of the board.** Is the board the right size to accomplish its objectives? Does it have members from diverse backgrounds? Are the majority of board members independent of management?

**Maintain a conflict of interest policy.** Is the policy in writing? Does it require regular disclosure? Is the policy applied to both management and the board?

**Document policies for fundraising and accepting gifts.** How are gift restrictions documented? What is the minimum level for a restricted gift? What types of fund raising activities are considered appropriate? How is

the donor listing utilized? Are grant applications and reporting functions properly established and monitored?

**Develop a policy for upper level management and board compensation.** Do board members receive a stipend or expense reimbursements? Who approves these transactions? Who approves the Executive Director's compensation? What are the procedures used in determining the compensation level?

**Monitor financial matters.** Is there an independent audit committee or similar group? Does this group oversee the work of the independent auditor? Is the 990 return reviewed by Board representatives and management before it is filed?

**Establish a document retention policy.** Are there legal requirements related to document retention? Is the policy understood by those who work with the documents?

**Document board activities.** Are minutes maintained for all meetings? Are meetings open to the public?

What matters are considered in closed meetings? Is there enough detail in the minutes to support decisions and policies?

To accomplish the organization's mission, there must be thoughtful consideration and establishment of governance policies by board members. They must help focus scarce resources in the areas where they count the most. It is important that board members understand their organization's policies and goals. Once they do, they will be able to focus on the organization's key purposes with a strong underlying base of documented policies and processes.



Article written  
by Marilyn  
Pendergast,  
Partner

MOST NONPROFIT ORGANIZATIONS FOCUS THEIR ENERGY AND RESOURCES ON A DEDICATED CAUSE. THIS CAN SOMETIMES LEAD TO IGNORING BASIC POLICIES RELATED TO GOVERNANCE THAT CAN STRENGTHEN THE ORGANIZATION WITHOUT SIGNIFICANT COSTS.



## IRS Proposed Regulations Add New Examples For Private Foundation Program-Related Investments



The Internal Revenue Service (IRS) proposed regulations (Reg. 144267-11) that will allow private foundations to participate in more types of program-related investments (PRIs) without subjecting the foundation to excise tax.

PRIs are investments that have as their primary intent the accomplishment of a charitable purpose, do not have as a significant purpose the production of income or capital appreciation and do not attempt to influence legislation or intervene in a political campaign.

Section 4944(a) of the Internal Revenue Code imposes an excise tax on a private foundation that makes an investment that jeopardizes the carrying out of the private foundation's exempt purpose. Section 4944(c) excludes PRIs from treatment as jeopardizing investments.

PRIs are important, yet underutilized vehicles by which foundations may accomplish their charitable purposes. This happens for a couple of reasons; first, guidance with respect to the types of investments that qualify as PRIs is minimal. Second, there is no means for a private foundation to obtain approval from the IRS that its investment constitutes a PRI and since PRIs are often unique or complicated investment structures, many foundations are hesitant

to undertake an investment without approval from the IRS.

Prior to these proposed regulations, there were nine examples illustrating investments that qualify as PRIs and one example of an investment that does not qualify as a PRI. The proposed regulations add nine new examples that show a wider range of investments that qualify as PRIs. The proposed regulations do not modify the existing regulations but rather provide additional examples. The new examples demonstrate that a PRI may accomplish a variety of charitable purposes. Several examples also demonstrate that an investment that funds activities in one or more foreign countries may further the accomplishment of charitable purposes and qualify as a PRI. Finally, the proposed regulations include examples that show that loans and capital may be provided to individuals or entities that are not a charitable organization themselves, if the recipients are the instruments through which the private foundation accomplishes its exempt activities.

The regulations under other Code sections give special tax treatment to PRIs. PRIs are recorded as charitable-use assets and therefore excluded from the assets a private foundation takes into account when determining how

much it must distribute for the taxable year. In addition, PRIs are "qualifying" distributions for purposes of meeting the distribution requirements.

Apart from tax considerations, PRIs also provide several advantages for foundations such as allowing a foundation to recover its investment and recycle its assets for future grants and increasing the pool of eligible recipients who can receive funding from a foundation.

Overall, PRIs will not only help improve the community, but also secure the financial assets necessary to improve foundations credit history and attract further capital to be recycled. With such positive influence, it is predicted that the use of PRIs will expand.

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Article written by  
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## NOT-FOR-PROFIT INDUSTRY INSIGHT

With the increasing complexity of laws and regulations, it's important for associations, foundations, charities, hospitals, schools and other tax-exempt entities to seek out professionals with extensive experience in nonprofit compliance issues. We understand there are many challenges affecting the industry and provide the attention needed to help clients stay focused on their job at hand.

UHY LLP's National Not-For-Profit Practice offers comprehensive audit and assurance, tax planning and compliance and business advisory services to meet the unique, complex needs of nonprofit organizations.

These types of specialized services, which cut across the traditional service lines, demonstrate our philosophy of skilled professionals integrating industry expertise with technical services.

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