

IRS Releases Suggested Governance Guidelines for Tax-Exempt Organizations

On Friday, February 2, the Internal Revenue Service (IRS) released proposed, suggested governance guidelines for tax-exempt organizations. Satisfaction of these proposed guidelines is not a requirement for exemption, but they are intended to emphasize what the IRS believes to be the important relationship between effective governance and satisfaction of exempt purposes.

The guidelines address the following nine general topics: (1) Adoption of a Mission Statement, (2) Adoption of a Code of Ethics and Whistleblower policies, (3) Satisfaction of the Duty of Care/Director Diligence, (4) Satisfaction of the Duty of Loyalty/effective conflicts of interest oversight, (5) Constituent transparency, (6) Oversight of fund-raising activity, (7) Stewardship of financial affairs, (8) Payment of reasonable compensation, and (9) Adoption of a document retention policy.

At first glance, these guidelines may be seen as confirming governance practices already in place at many sophisticated nonprofits. However, the proposed guidelines should not be summarily dismissed as breaking no new ground. Their publication underscores what has been a long-standing IRS interest in effective corporate governance as a foundation of charitable organizations' qualification for exemption. The guidelines cover specific governance areas not previously focused on by the IRS (e.g., codes of ethics, whistleblower policies, director compensation). In addition, they contain some subtle, new suggestions in areas in which the IRS has long had a particular interest (e.g., constituent transparency, financial oversight, director attentiveness, and conflicts of interest policies). With respect to executive compensation, the guidelines focus on transparency and decision-making, and emphasize complete Form 990 disclosure.

These proposed guidelines should prompt exempt organizations to consider a review of their current governance policies and practices relative to these new focus areas and suggestions, keeping in mind that in some areas, such as conflicts of interest, the IRS best practices may not be as demanding as the governance best practices that exist now or are emerging from other sources.