



Life Post Sarbanes-Oxley: What Your Nonprofit Can Learn

While most provisions of the sweeping Sarbanes-Oxley Act (SOX) don't apply to non-profits, many nonprofit organizations are taking steps to voluntarily comply with some critical areas of the Act's mandates. Should yours? And, if so, how far should you take it?

First, A Little Background

In essence, Sarbanes-Oxley mandates an array of internal auditing and governance controls to publicly traded companies, including requiring that CEOs, CFOs and other fiduciaries become fully responsible for statements made in their annual financial statements. Not bad business, most of us would say, in the wake of Enron et. al.

While SOX applies only to publicly traded companies, it does set a standard of internal controls that *all* companies — including non-profits — could do well to follow. Those internal controls include:

- “Up-the-ladder” reporting requirements for accounting and other financial irregularities,
- Internal audit committees,
- Governance committees, and
- Internal financial control structure.

Good Governance Is Good Business

Big picture. these are not bad ideas for any nonprofit to

implement. Stakeholders of nonprofit organizations are increasingly likely to view implementation of these controls as the “gold standard” in order to protect their stake. Nonprofits that are not responsive to this trend may face stakeholder concern in regard to future funding. In addition, implementation of SOX standards, even if technically not legally required, can go a long way toward heading off unwanted scrutiny in states where attorneys general have nonprofit oversight authority.

So Where Do You Start?

Again, assuming that good governance is just good business, let’s look at some SOX-inspired practices that could benefit your organization:

Train your board in its fiduciary responsibilities. Truth be told, many board members (and, just as important, potential members) are a bit jumpy in these post-SOX days. They either have a newfound awareness of their liability as board members or are laboring under frightening misconceptions. Address their concerns by providing some orientation/basic training that helps ensure they understand their responsibility for fulfillment of your organization’s mission and the legal accountability for its operations. They need to know that, as a group, they are in charge of:

- Establishing a clear organizational mission;
- Forming the strategic plan to accomplish the mission;
- Overseeing and evaluating the plan's success;
- Hiring a competent executive director and providing adequate supervision and support to that individual;
- Ensuring financial solvency of the organization;
- Both interpreting and representing the community to the organization and vice versa; and
- Instituting a fair system of policies and procedures for human resource management.

Of course, their best “protection” is to prepare for and attend meetings, ask questions, and address potentially unsound or imprudent decisions.

Conduct an internal audit. This is a great way to identify irresponsible accounting practices. An internal audit can bring to light any weak areas and encourage formation of

processes that are not vulnerable to fraud and abuse. As changes are made, written policies that are vigorously enforced by executive staff and the board send a strong message that misconduct will not be tolerated.

Establish conflict of interest policies — Your organization should establish clear conflict-of-interest policies regarding board, staff, volunteers, contractors, and organizational partners or allies, and adhere to these policies in all dealings. The policies should include an obligation of each board member to disclose all material facts and relationships and refrain from voting on any matter when there is a conflict of interest. Quite simply, conflicts of interest occur whenever a director acts in a position of authority on an issue in which he or she has financial or other interests.

Provide a confidential avenue for complaints. Much like the “whistleblower” provisions of SOX, your nonprofit should provide a mechanism that encourages staff and board members to report inappropriate financial management or malfeasance. To be effective, of course, such a policy must ensure complete confidentiality and anonymity, and protect against any form of retaliation.

Develop document retention standards. If you haven’t already, make the time now to develop a written, mandatory policy for document retention and destruction, including electronic files such as email and voicemail. This would also be a good time to review or implement archiving and back-up procedures.

With extensive experience working with nonprofits like yours, our professionals can help. Talk to us about proper methods for structuring the appropriate committees and processes to create a compliant, accountable atmosphere within your organization.