Three Critical Privacy Issues Every Nonprofit Entity Should Consider

By Deena Coffman, GSEC, CIPP/US, CIPP/E, CIPM, FIP

Most nonprofit organizations collect, use and store "personal information" of donors and staff. There are well over 200 laws, just in the United States, that mandate protections of this information and apply, in whole or in part, to nonprofits. All nonprofit entities should understand the requirements that TCPA, GDPR and U.S. state data breach/protection laws impose upon their organizations.

Just a few years ago, many entities were largely unaware of the impact data privacy and cybersecurity could have on their organization overall. Most categorized these issues as belonging to the IT or HR departments. Now, data-privacy class-action litigation has erupted and data breach announcements dominate the headlines. Currently, in almost every survey conducted of boards and senior management, data issues rank as one of their three top concerns, if not their single greatest concern. Nonprofit entities would be well advised to tend to this important area which is often overlooked until it becomes a crisis.

TCPA

The Telephone Consumer Protection Act of 1991 (TCPA) was introduced in response to consumer sentiment toward unwanted telephone solicitations. Telemarketers calling during all hours—particularly the dinner hour—became a punchline and an irritant. TCPA has been updated several times over the years, and the most recent update tightens restrictions on calling without written permission, even if a "prior business relationship" existed. Nonprofit organizations are exempt from some, but not all, requirements under TCPA. For example, the "abandonment rules" are an exemption for nonprofits, and requirements for auto-dialers and prerecorded calls are different for nonprofit organizations than for commercial entities. While the requirements are less restrictive, nonprofit organizations still can't afford to completely ignore TCPA, because some requirements do still apply, and the cost for getting this incorrect can be enormous.

The recent changes give the TCPA "teeth" by providing for a private right of action, effectively inviting consumers, the FCC and states' attorneys general to join in enforcement efforts. Plaintiffs are able to recover the higher of their actual loss or $500 for each violation. And, if the court finds that the defendant acted willfully or knowingly, the court has discretion to triple the amount to $1,500 for each violation.

Organizations that conduct telemarketing should be tuned to recent changes in the TCPA. Professional plaintiffs are causing a rise in TCPA enforcement and there have been no shortage of multimillion dollar settlements. Interline Brands agreed to pay $40 million to Craftwood Lumber to settle a suit alleging a TCPA violation by sending over 1,500 advertisements via fax. And, Bank of America agreed to pay $32 million for violating TCPA through its use of auto-dialing technology and prerecorded voice messages without prior written consent.

TCPA has no cap on total damages—making it easy to imagine that an organization with a large roster of donors or potential donors could quickly expose itself to losses in the range of multiple millions of dollars.

How do you protect yourself from this exposure? Simple—

get written consent from individuals before marketing to them via phone or fax.

State Data Breach Laws

Almost every U.S. state and territory has enacted laws requiring entities to protect sensitive consumer and employee information in their possession and, if that protection fails, to provide notification to the individuals so she or he is able to be alert to identity theft and fraud. These laws vary, but it is important to note that an entity must be informed of the evolving state laws that apply where their employees, customers and prospects reside and not just where the entity is located. These requirements were initiated in 2003 with California's law with other states following suit. Some states have also already updated their original laws to keep up with current technology standards and consumer expectations. With identity theft continuing to rise and awareness increasing, the trend will certainly continue.

Increasingly, state laws address issues beyond breach notification. Some states require specific security measures such as a written information security plan or encryption. At last count, four states had specific requirements for a written information security plan, three states require a dedicated employee responsible for information security and seven states require security provisions in supplier contracts. Penalties for violations can range up to $500,000.

Some states require privacy policies to be posted. For example, since 2003 the California Online Privacy Protection Act (CalOPPA) has required that all websites that collect personal information about state residents post an online privacy policy if the information is collected for the purpose of providing goods or services for personal, family or household purposes. Most websites, even if not required, post privacy policies. Ensuring the privacy policy complies with applicable laws is a critical first step. It is important then to align technology and operations with the public-facing statements and to maintain that alignment as new systems and processes are adopted and the business grows. Some state laws even address internal privacy policies. In 2005, Michigan began requiring employers to publish internal privacy policies to address the proper handling of employee sensitive information. New York has adopted a similar statute as has Connecticut, Massachusetts, and Texas. As mentioned, states are working to keep pace with technology changes and evolving standards, which makes it important for entities to remain alert to developments.

General Data Protection Regulation (GDPR)

U.S. entities may, understandably, not be aware of developments in European privacy law. But, Europe recently made dramatic changes to its data privacy laws which will impact the way many U.S. entities do business. U.S. entities doing business with or within Europe (EU) or marketing goods and services (even if unpaid) to EU residents must update how they collect, handle and secure information that identifies a natural person, such as name, address or email address, or they risk facing heavy fines and penalties. Even entities that are not located in the EU may be impacted as their EU clients and suppliers may require compliance as a condition of continued business. This new regulation goes into effect on May 25, 2018, and contains important new operational requirements concerning data minimization, accuracy, accountability, purpose and storage limitations, and data protection that will require impacted organizations to begin making technology and administrative changes far in advance of the deadline.

The regulation also mandates that entities demonstrate compliance, which will require the creation of policies, procedures and documentation mechanisms. If your entity possesses data on EU residents, you are positioned to be impacted by this new regulation. If you market to or solicit donations from the EU market, you'll want to stay tuned to updates to the ePrivacy Directive (this is also called the "Cookie" Directive) which is expected to create as much disruption for U.S. entities.

The GDPR authorizes regulators to levy remarkably steep fines in amounts exceeding €20 million or 4 percent of annual global revenue, whichever is higher. Germany and Spain have stated openly that they may move against U.S. entities quickly. France has mentioned codifying parts of GDPR earlier than 2018. Some example requirements likely to be of interest to nonprofit entities include the following:

- Consent must be "freely given, specific, informed and unambiguous." Silence, pre-ticked boxes or inactivity is not sufficient to provide consent. Much of the data currently in use was collected using "opt out" mechanisms. This will need to be remediated if the information is going to continue to be retained and used.

- If the data is being used because consent has been given, then that consent must be able to be withdrawn at any time and withdrawn "as easily as it was given." This will necessitate changes in processes and quite possibly technology in order to accommodate. This also means that the data belonging to that individual not only cannot be used going forward but must be erased.
- For data being used based on consent, the data subject has the right to request an inventory of all of the information an entity possesses on that individual. Accommodating these requests will require entities to establish mechanisms for receiving the requests, verifying the identity of the requestor, accurately and completely finding all relevant information to respond to requests and a documentation mechanism.
- A new "accountability principle" makes those that collect and use data responsible for demonstrating compliance with the general principles outlined in the regulation. (Demonstrating compliance is in the form of policies, procedures, impact assessments, documentation of consent, inquiry handling, responses and decisions, etc.)

Interpreting GDPR requirements strictly is likely to lead entities to incorrect conclusions. Special provisions for nonprofit organizations are present in the GDPR, but they are limited, so most of the regulation still applies to nonprofit entities just as it does for for-profit companies. Privacy rights are not absolute, and a balancing decision must be made by legal counsel familiar with EU privacy laws. The GDPR contains many different requirements and the requirements may or may not apply to all entities depending on various factors. To make correct decisions, counsel must know details on what data is processed, the circumstances around the original collection, what is done during processing, retention/disposition, access, security controls and onward transfers.

Data privacy is increasingly important and can, if ignored, have tremendous impact on a nonprofit. An annual privacy assessment is recommended to see that your technology, policies and operations are aligned with current applicable requirements.

So, You Want to Terminate Private Foundation Status and Become a Public Charity!

By Christina K. Patten, EA

Once an organization is classified by the Internal Revenue Service (IRS) as a private foundation, it remains a private foundation. While most private foundations thrive, others may struggle to maintain longevity. Some mature private foundations struggle to keep philanthropy a family endeavor and/or struggle to meet their annual distribution requirements. In addition, operational costs can be significant and the excise tax on net investment income may cut into available funds. Occasionally, an organization may have erroneously determined that it was a private foundation and wish to correct the error in classification. Issues like these can lead a private foundation to consider terminating its foundation status.

The only way an organization can terminate its private foundation status is to comply with the requirements of Internal Revenue Code (IRC) section 507, i.e., by showing that its assets are subject to public supervision, either through transfer of its assets to an IRC 509(a)(1) charity, by operation as an IRC 509(a)(1), (2) or (3) charity, or by payment of the IRC 507 tax. A termination under IRC 507 is not a dissolution of the organization. A private foundation whose status is terminated under IRC 507 is treated as a new organization created on the day after the date of such termination.

There are four ways to terminate private foundation status under section 507; the first two involve tax liability:

1. Voluntary termination by notifying the IRS of intent to terminate and paying a termination tax: To voluntarily terminate under section 507(a)(1), the organization must send a statement to IRS Exempt Organizations Determinations Group of its intent to terminate its status under section 507(a)(1). The statement must provide the detailed computation and amount of private foundation termination tax. The tax must be paid simultaneously with the filed statement unless the organization requests an abatement. Abatement is generally granted if the organization distributes all its assets to one or more charitable organizations described in section 509(a)(1) that have been in existence for at least 60 months. Abatement may also be possible in situations that involve corrective action under state law.

2. Involuntary termination for either willful repeated violations or a willful and flagrant violation of the private foundation excise tax provisions and becoming subject to the termination tax.

3. Transfer of assets to certain public charities: A private foundation may terminate its status under section 507(b)(1)(A) by distributing all its net assets to one or more organizations with a ruling or determination letter described in section 509(a)(1). However, the organization receiving the distribution must have been in existence and so described for a continuous period of at least 60 months before the distribution. A private foundation that terminates its status in compliance with section 507(b)(1)(A) is not required to notify the IRS of its intent to terminate nor pay a termination tax.

4. Operating as a public charity for a continuous period of 60 months after giving appropriate notice: An organization may terminate its private foundation status under section 507(b)(1)(B) if it meets the requirements of section 509(a)(1), (2), or (3) for a continuous 60-month period beginning with the first day of any tax year, and notifies the IRS before beginning the 60-month period that it is terminating its private foundation status.

This notification to the IRS should contain the following information:

- Name and address of the private foundation
- Its intention to terminate its private foundation status
- Code section under which it seeks classification (IRC 509(a)(1), (2), or (3))
- If IRC 509(a)(1) is applicable, the clause of IRC 170(b)(1)(A) involved
- Date its regular taxable year begins
- Date of commencement of the 60-month period

The organization also must establish, immediately after the end of the 60-month period, that it has met the requirements of section 509(a)(1), (2), or (3).

Tax-exempt organizations use Form 8940, Request for Miscellaneous Determination, to request termination of private foundation status under section 507(b)(1)(B) and again to provide the IRS with an analysis of its public support after the 60-month period following the private foundation termination period.

IRC 509(a)(1)

Section 509(a)(1) organizations primarily include churches, schools, hospitals, and other organizations that receive their public support primarily from gifts, grants and contributions from a broad group of people. An organization terminating its private foundation status to become a publicly supported organization under IRC 170(b)(1)(A)(vi) for the 60-month period will qualify only if:

- the total amount of support received from governmental units or from direct or indirect contributions from the general public during a continuous period of 60 calendar months equals one-third or more of its total support for the period, or
- the organization meets the "facts and circumstances" test provided in the regulations under IRC 170(b)(1)(A), for a continuous period of 60 calendar months.

IRC 509(a)(2)

Section 509(a)(2) organizations are those in which support is received from a combination of gifts, grants and contributions and fees for their exempt services. An organization will be considered an IRC 509(a)(2) organization for the purposes of a 60-month termination only if the organization meets the support requirements set forth in IRC 509(a)(2)(A) and (B) for the continuous period of 60 calendar months.

IRC 509(a)(3)

IRC 509(a)(3) organizations support other organizations described in IRC 509(a)(1) and (2). An organization will be considered an IRC 509(a)(3) organization for the purpose of a 60-month termination only if the organization satisfies the organizational and operational test and other requirements of IRC 509(a)(3) on or before the commencement of the 60-month period and continuously thereafter during such period.

Most Common Termination Method:

IRC 507(b)(1)(B) is the most common way of terminating private foundation status where the organization will continue in existence. To meet the requirements for successful termination under this section an organization may have to change its organizational structure, operations, sources of support, or any combination thereof.

A private foundation wishing to begin a 60-month termination immediately may choose to change its accounting period to start a 60-month period rather than wait until the end of its current taxable year. In determining whether the organization has met the requirements for a successful 60-month termination as a public charity, its combined sources of support are considered. Successful termination occurs only when the final informational requirements are met at the end of the 60-month period and the termination is retroactive to the beginning of the 60-month period.

During the 60-month termination period, the terminating private foundation must file Form 990-PF with the IRS and check Header Box F indicating that it is terminating its private foundation status under IRC 507(b)(1)(B).

The organization generally will be treated as a public charity during the 60-month termination period; grantors and contributors can rely on that classification for charitable deduction purposes except in certain circumstances. The organization, however, will remain liable for the private foundation excise taxes under Chapter 42 of the Code (other than the tax on net investment income) until it receives a final determination from the IRS that its conversion is successful. If the conversion is unsuccessful, the organization will not incur penalties for its nonpayment of the Section 4940 excise tax during the 60-month period, but will be required to pay interest on any late payments it must make when the transition period ends.

If the organization pays private foundation excise taxes (e.g., the tax on excess business holdings or taxable expenditures) during the 60-month period but is successful in the conversion, it should be entitled to a refund of the taxes paid. The organization will continue to file IRS Form 990-PF for each year in the 60-month period, if that period has not expired before the due date of the return.

Board Governance: A Board Member’s Perspective

By Laurie De Armond, CPA

A nonprofit’s governing body is integral to the success and effectiveness of the organization. Boards play an instrumental role in setting strategy and overseeing the use of an organization’s assets to carry out its mission. The overall strength of a nonprofit board depends on the contributions of each individual board and committee member. That said, what exactly does it take to excel as a board member?

First Timers: Preparing Board Members for Success

Nonprofit boards are often comprised of professionals from diverse career backgrounds and varying levels of experience in the nonprofit sector. When individuals first join the board, there is a dual responsibility for both the organization and the individual to bridge the initial knowledge gap and get board members quickly acquainted with their new role. What should organizations do to prepare incoming board members?

It's critical to create a formal onboarding process that all new board members follow:

- **Distribute a strategic plan.** Developing a clear strategy for your organization and providing an up-to-date document to all current and incoming board members will give the board a clear sense of where you're headed as an organization, what defines success for your programs and what goals you've outlined for the future.
- **Hold your organization accountable.** Once a clear strategy is established, it's important to execute on that strategy and track your organization's progress. Developing a "scorecard" and making that information available to your board will help individual board members stay in tune with the organization and identify how they can best calibrate their skills to benefit the organization.
- **Provide a holistic view.** Committee chairs should make sure all board members are well-versed in all the key issues impacting the organization, regardless of their specific expertise. Providing regular updates on the activities of each committee will help board members make fully informed decisions.

Off Script: Navigating a Crisis

Preparing for a Crisis

Whether it's a breakdown of mission, a financial squeeze or alleged fraud, crises carry serious implications for board members. When nonprofits find themselves in the midst of a crisis, it's often too late to implement a management and response program.

What practices can nonprofit boards put in place to prepare for a crisis—before one takes place?

- **Establish a Risk Assessment Committee.** Organizations with a formal committee dedicated to identifying and assessing risks will be better positioned to handle a crisis. Taking the time to understand what risks your organization could face, developing a clear plan to mitigate and address those risks, and communicating those risks with stakeholders will reduce the likelihood that the board is blindsided by a crisis.
- **Develop a clear protocol and a communications infrastructure.** Organizations should proactively identify which individuals will serve as the official spokespeople in times of crisis and provide the necessary training for those individuals.
- **Institute a transparency policy.** The organization has an obligation to maintain transparency with the board throughout a crisis and to communicate any issues with incoming board members during the recruitment process.

Navigating Crises as a New Board Member

In times of crises—particularly heavily-publicized crises—organizations may have difficulty recruiting members. By the same token, boards may not always maintain full transparency about crises and challenges during the recruiting process.

How can incoming board members prepare for surprises that may not have been readily disclosed by the board?

- **Do your homework.** Before making the decision to join a board, individuals need to perform a thorough due diligence to get a deep understanding of the organization's mission, finances and core challenges. Incoming board members should review all publicly available materials, such as the organization's Form 990, website, mission statement and chartering information. Oftentimes, any financial challenges the organization is experiencing would be evident on the Form 990.
- **Take a deep dive.** When individuals are invited to join a nonprofit's board, in many instances they already have some level of familiarity with the organization and its mission. But once they accept a board seat, they take on a fiduciary responsibility that requires a much deeper dive into the organization. It's

imperative that incoming board members take the time to thoroughly research the role and identify how they can add value.

- **Ask for resources.** If an organization does not readily provide preparatory materials or have a formal onboarding process, incoming board members should ask for minutes from recent board meetings and standing committee meetings, as well as any formal reports on operations and outcomes. These documents will provide valuable insights into any large issues the organization is dealing with, and what steps the management team is taking to resolve them.

IRS Focused on Charitable Donation Substantiation Compliance

By Jeffrey Schragg, J.D., CPA

Recent Tax Court cases have demonstrated by the Internal Revenue Service's (IRS) increase in strict compliance with the substantiation requirements for charitable donations. For example, a $64.5 million charitable contribution was recently disallowed because there was no written acknowledgment from the recipient at the time the return was filed. After the donation was made and prior to the return filing, the charity sent the taxpayer a letter acknowledging receipt of a donated facade easement. Unfortunately, this letter did not state whether the charity had provided any goods or services to the taxpayer, or whether the charity had otherwise given the taxpayer anything of value, in exchange for the easement. The taxpayer did include a copy of the appraisal report for the amount of the donation, a copy of the charity's letter, and Form 8283, Noncash Charitable Contributions, executed by the appraiser and by a representative of the charity with the return. The only item missing was the statement "No goods or services were provided in exchange for your donation" on the acknowledgment letter. (15 West 17th Street LLC v. Commissioner, 147 T.C. No 19, December 22, 2016). These eleven missing words caused the disallowance of the $64.5 million contribution. Only $5.8 million per missing word.

A similar result was recently provided in the donation of an aircraft on an amended return. Notably, the taxpayer didn't attach a Form 1098-C, Schedule B to his return. And while he did include a copy of a "potential" acknowledgment letter, that letter didn't acknowledge

his gift and omitted the other mandatory information required. He did include a Form 8283, Noncash Charitable Contributions, executed by the appraiser and by a representative of the charity along with a copy of the appraisal.

The taxpayer also included a copy of a donation agreement that contained some required information, but it didn't include his and the other partner/donor's signature, his TIN, or certification of the organization's intended use for the aircraft, and so couldn't serve as de facto contemporaneous written acknowledgment. (Joe A. Izen v. Commissioner, 148 T.C. No. 5, March 1, 2017)

As these cases illustrate, it is important for nonprofit organizations to ensure that written acknowledgment letters they provide contain all the necessary requirements to substantiate a charitable donation. The contemporaneous written acknowledgment required to substantiate a charitable contribution of $250 or more must contain the following information:

- Name of the organization;
- Amount of cash contribution;
- Description (but not value) of non-cash contributions;
- Statement that no goods or services were provided by the organization, if that is the case;
- Description and good faith estimate of the value of goods or services, if any, that the organization provided in return for the contribution; and
- Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

In addition, a donor may claim a deduction for contributions of cash, check or other monetary gifts only if the donor maintains certain written records.

Aligning Your People Strategy with your Organization Strategy = Results

By Donna Bernardi Paul, SPHR, SHRM-SCP

Who Are You, as an Organization?

Knowing who you are as an organization is paramount. What is your culture? What is your philosophy? What do you stand for? Why do your members, contributors, or users of your services choose your organization over another? What is it about your people that they like?

Aligning your Human Resource (HR) strategy with your business/operational strategy is key.

Knowing how to find the right people and get them to want to work for you and stay is the secret to a competitive advantage and includes the following:

Hiring the right people

Knowing what you want the individual to DO before you begin your search and determining if they fit within your culture is the formula for performance.

Performance: = competence x energy2

Competence: Do they have the skills to do the job?

Energy: Do they have the traits necessary to fit with the culture (e.g., self-motivation, customer service, work ethic, sense of urgency, ability to get along with others, etc.)

Surround yourself with self-motivated people who care and keep them motivated. If you do not hire self-motivated people, you will never be able to motivate them without the carrot and stick approach.

Training and Development

Once you spend time and money hiring the right people, make sure that they have the training, development, tools and resources they need to be as productive as possible as quickly as possible.

Leadership

Employees want good leaders/bosses. Ensure that anyone who is responsible for managing others has been trained and is good at it. Resist the urge to promote people into positions where they are leaders/bosses if they are not good at these types of roles. You will lose employees because people join organizations but they quit leaders/bosses.

Career Development

Employees want growth and established career paths. If they cannot grow within your organization, they will leave in order to grow somewhere else. Do not spend resources training people only to lose them to another employer who will reap the advantages of your hard work.

Rewards & Recognition

Employees want to be recognized for their accomplishments and contributions. Do not punish good performers by giving them more work or reward poor performers by taking work away, continuing to give them raises and bonuses and allowing them to stay with you. It is demotivating for your good performers. Employees want to be part of the team. They want their ideas taken into consideration. They want to feel valued.

In the end, your organization's people strategy should align with the organization's overall strategy, including the organization's culture. Ideally, every people-related initiative should result in something that your members, contributors and users of your services value. A consultative and strategic HR approach can provide insights as well as subject matter expertise to help organizations leverage their employees to achieve the organization's goals and stay competitive.

What the White House Tax Plan Means for Charitable Giving

By Laura Kalick, JD, LLM in Taxation

The White House's preliminary tax plan, released in late April 2017, keeps the itemized deduction for charitable contributions while eliminating most other itemized deductions. The plan, however, also proposes raising the standard deduction, which could impact taxpayers who itemize their taxes—and who are responsible for a significant portion of charitable giving. While the Internal Revenue Code (IRC) hasn't seen a major overhaul since 1986, the tax law as we know it today may not be the tax law even a few months in the future.

If and when tax legislation is passed, it is an unknown as to the effective dates of the new rules. Effective dates can range from the date of enactment, to tax years beginning after the date of enactment, or even to years in the future or retroactively (but tax legislation usually does not have a retroactive effective date, but that can happen). And different provisions will have different

effective dates. Regardless of how tax code changes shape up, encouraging giving now—while the outcome is predictable—is imperative.

Below are some of the details of tax changes proposed in the White House's preliminary tax plan:

Lowering the number of tax brackets from seven to three: at 10 percent, 25 percent and 35 percent. It hasn't been specified which levels of income would be affected.

Elimination of many itemized deductions and increasing the standard deduction:

- Trump's plan proposes eliminating most itemized deductions outside of the charitable deduction and itemized deduction for mortgage interest. In particular, the elimination of the state and local tax deduction could significantly decrease the number of taxpayers who itemize their deductions.
- The Trump plan would also increase the standard deduction from the current $6,350 for individuals and $12,700 for joint filers to $12,700 and $25,400, respectively. This means fewer people may be itemizing, and therefore may not be as concerned about generating deductions through charitable contributions.

Estate tax:

- Trump has also proposed eliminating the federal estate tax, currently at 40 percent. Charitable contributions from an estate reduce the overall taxable value of the estate. If there is no estate tax, charitable bequests may be significantly reduced.

What does this mean for America's charities? Charities should encourage donors to contribute now to take advantage of deductions while they're still available to maximize their fundraising potential.

Other Items to Note

OMB Issues a Uniform Guidance Procurement Grace Period Extension

On May 17, 2017, the Office of Management and Budget (OMB) issued a correcting amendment to the Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) in the Federal Register that permits an extension of the grace period for non-federal entities to implement changes to their procurement policies and procedures in accordance with the procurement standards in 2 CFR 200.317 through 200.326 for one additional fiscal year. With this extension, the implementation date for the procurement standards will start for fiscal years beginning on or after Dec. 26, 2017, for those entities that opt to take advantage of it.

Thus, an entity with a fiscal year ending Dec. 31, 2018, should be ready to implement the Uniform Guidance procurement standards at the beginning of that fiscal year, i.e., Jan. 1, 2018.

The OMB has stated that this will be the final grace period for non-federal entities who have not yet implemented the Uniform Guidance procurement standards. The OMB advised that entities should begin preparing for the implementation well in advance of the extended implementation date.

OMB reiterated that if an entity opts for this extension of the grace period, the non-federal entity must document their decision to choose to use the previous procurement standards during the extension period. This is specifically required by 2 CFR 200.110.

Release of the Draft 2017 OMB Compliance Supplement

The clearance process on the 2017 OMB Compliance Supplement (CS) is taking longer than expected. As a result, the OMB has released a final draft of the CS to the AICPA Governmental Audit Quality Center (GAQC) for purposes of 2017 single audit planning.

The draft 2017 CS can be accessed on the GAQC website with links to the individual sections. You can also access the 2017 CS from the "Spotlight" section of the GAQC home page. This document is currently unlocked and open to the public.

OMB has requested that this final draft version be used for planning purposes only since there could be changes during the clearance process. OMB is not expecting any significant changes since the draft CS has been reviewed by various federal agencies and other stakeholders, but they did want to note this is a draft version.

Key Changes to the Compliance Supplement

The draft CS includes several new pieces of guidance, as well as the normal types of changes made by OMB each year such as the addition, deletion and modification of various federal programs. All organizations with federal funds should review Appendix V, List of Changes for the 2017 Compliance Supplement, for more information about the changes made and the specific programmatic changes for specific CFDA numbers.

A few highlighted changes are as follows:

Part 2, Matrix of Compliance Requirements, has been updated to add and remove programs that were changed in Part IV of the CS. The matrix has also been updated to reflect changes to the applicability of compliance requirements for several programs.

Part 3, Compliance Requirements, contains only one substantive change. Part 3.2 was revised to recognize the extension of the procurement grace period by one additional fiscal year as noted previously.

Part 4 has been updated for the addition, deletion and updates to programs due to regulatory and other changes. Refer to Appendix V and the Table of Contents to see which programs are affected.

Part 5, Clusters of Programs, includes several regulatory and other updates to the Student Financial Aid (SFA) cluster which includes removing the applicability of the Period of Performance compliance requirement from the Department of Education programs included in the cluster. There were only minimal changes to the Research & Development (R&D) cluster. The listing of "Other Clusters" has been updated to reflect the removal of a cluster, program name changes, addition of a new program to an existing cluster and an addition of a new cluster.

Appendix VII, Other Audit Advisories, should be reviewed by all entities as there were several changes to this section. One significant change relates to the removal of the description of agency exceptions to the Uniform Guidance (UG). The appendix instructs entities to review the program supplement and, as necessary, agency regulations that adopted or implemented the OMB UG to determine if there is any exception related to the compliance requirements that apply to the program included in the 2017 CS.

Expected Timing for Release of Final 2017 CS

There currently isn't an estimated date for final issuance that has been communicated. Once the final CS is issued, we will communicate this.