

WINDES NONPROFIT ADVISOR



The [Windes Nonprofit Advisor](#) is a periodic technical publication focusing on the tax, regulatory, and accounting issues confronting nonprofit organizations.

The [Windes Nonprofit Group](#) possesses extensive experience in preparing and reviewing more than 150 Forms 990, 990-T, 990-PF, and state tax-exempt forms, in addition to having experience in the preparation and filing of both federal and state tax exemption applications for public charities, private foundations, and other exempt organizations. Furthermore, we can assist in providing valuable guidance (governance / reasonable compensation documentation / public support test / special events / lobbying / transactions with related parties) to nonprofit organizations.

The Windes Nonprofit Group prepares audited financial statements and ERISA audits for more than 170 nonprofit organizations. For retirement plans, Windes has experts on staff for 403(b) plan administration and compliance, including plan document issues, Form 5500 preparation and filing, non-discrimination testing, and government compliance programs.

Our [Nonprofit Team](#) is composed of the following individuals who are dedicated to providing nonprofit organizations with high-level tax, regulatory and accounting consulting, tax compliance services, and financial statement audit and assurance services:

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NONPROFIT GOVERNANCE POST COVID-19 PANDEMIC

Nonprofits have faced a litany of changes, risks, and challenges over the last three and a half years due to the onset of the COVID-19 pandemic. The trials nonprofits have dealt with include staffing shortages, forced decisions to end programs, expanding programs, and more restrictive use of funds, to name a few. In answer to the call of these unique challenges, many nonprofit boards have stepped out of their typical role of oversight and into day-to-day decision-making and rapid policy-setting. Now that the world is moving out of the pandemic phase, it may be time for governing boards to take a step back and realign.



THE ROLE OF NONPROFIT BOARDS

All nonprofit organizations are required to have a governing board. The board is responsible for setting and overseeing the implementation of strategic objectives, ensuring the maintenance of nonprofit status, and compliance with laws and regulations. The governing board holds some liability for their respective organization and has the final authority for that reason. Board members have legal responsibilities for the duties of care, loyalty, and obedience. There is a requirement that board members are faithful to the organization's mission and do not take actions that are inconsistent with that mission.

Board roles should be defined, and will vary from organization to organization, depending on size, mission, and needs. The board should also serve as a balance for management, adding oversight, checks and balances, and avoiding duplication of roles. Ideally, the board will provide the strategic direction of the organization, and management will handle the day-to-day operations and implementation of the strategies set by the board. The board's roles should include, at a minimum:

- Assuming fiduciary responsibility for compliance
- Setting strategic objectives for the organization
- Creating policies to guide the organization toward meeting those objectives
- Serve as content matter experts for the organization
- Hire and monitor the leader of the organization (such as a CEO, executive director, etc.)
- Filing the annual IRS Form 990 and other state-required filings (if applicable)

BOARD BEST PRACTICES

The laws and rules regulating boards and nonprofits differ from state to state. However, there are some best practices that all boards can follow.

Boards should meet at least three times per year, and minutes of those meetings should be documented and maintained. Experts recommend a minimum of five board members, but the number of members needed for each organization will differ depending on size and mission. Boards should establish proper segregation of duties – not just between board members, but also between management and the board. Boards can delegate to committees. Committees can be formed for one-time projects, such as a capital campaign, or on an ongoing basis, such as a Finance or Audit Committee. Boards should maintain oversight of the committees, usually by having a member of the committee report at board meetings. Boards can also have non-voting advisory board members. These members provide specific content expertise and can provide recommendations to the board.

CRITICAL AREAS FOR BOARD GOVERNANCE

As boards realign to move back to governance and oversight post-pandemic, creating a checklist or roadmap of items that may not have received much attention over the last few years may prove helpful. Some individuals may have only served on a board during the pandemic and may need to become acquainted with standard board practices.

Some of the more significant items that a board may want to refocus on include:

- Have a robust conflict of interest policy. All related-party transactions should be reviewed by the board and must be reported on IRS Form 990. This includes reviewing board independence.
- Establish a code of ethics. Ensure the code addresses any applicable laws and regulations. It may be necessary to establish a separate code of conduct. Ensure staff and the board are trained in these codes early on in establishing their roles.
- Review or establish a whistle-blower policy. The IRS Form 990 requires nonprofit organizations to disclose if they have a whistle-blower policy, and it is considered a best practice to have one.
- Review board member term limits and role definitions.
- Ensure the board is involved with the annual budget and regular review of financial performance, including investment policies.
- Review or establish a document retention policy. Nonprofit organizations are often held to a higher standard because of the public support they receive. An appropriate document retention policy can limit potential damages from lawsuits or other inquisitions.
- Safeguard the organization's assets, ensuring proper insurance coverage is in place, as well as establishing appropriate financial and investment policies. Keep in mind that while it is not an asset found in accounting records, one of the most important assets any nonprofit has is its reputation.
- Review the nonprofit's bylaws and Articles of Incorporation. The bylaws should include essential governance matters, such as the size of the board, how often it will meet, and the roles of directors and officers. The Articles of Incorporation contain the basic structure information of the nonprofit.
- Focus on team building. Team building among board members encourages participation from everyone and prevents burnout.

Though the pandemic may be over, the challenges that nonprofit organizations face will continue to evolve. Establishing a strong board with a penchant for oversight and consistent policy-setting will help organizations tackle those challenges head-on. If you have any questions on board governance, feel free to reach out to us, and we will be pleased to be of service.

For more information or questions about this article, or to find out how [Windes can assist](#), please contact Alicia Manning at amanning@windes.com or **844.4WINDES** (844.494.6337).

WHAT IS CECL, AND HOW WILL IT AFFECT NONPROFIT ORGANIZATIONS?

INTRODUCTION

Over the past four years, nonprofit organizations have faced a steady stream of new Accounting Standard Updates (ASUs) to adopt. Every organization, to some degree, has been forced to expend energy on preparing for and implementing the various standards, including the new nonprofit organization financial reporting model, revenue recognition, grants and contracts, disclosure requirements for in-kind contributions, and, most recently, the operating lease standard.



CECL ON DECK

Looking ahead, thankfully, there appears to be a bit of a let-up in terms of the quantity and potential impact of new accounting pronouncements and projects.

One new standard that is coming, which we predict will have the potential to impact a variety of nonprofit organizations, is **Financial Accounting Standards Board (FASB) ASU 2016-13 Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments**. At first glance, one can be forgiven for assuming that this will have minimal impact on nonprofits and instead be aimed at banks. However, while the new current expected credit loss (CECL) model will impact financial institutions more heavily, nonprofits are certainly within the scope of the ASU. CECL will apply to any entity that holds financial assets, which includes receivables, loans, and even some investments. Many nonprofits will be affected.

WHAT IS CHANGING UNDER THE NEW STANDARD

The easiest way to understand CECL is that it replaces the current “incurred loss” model with a new “expected loss” model. Under an “incurred loss” model, losses were measured at the reporting date. Impairment was recognized when it was probable that a loss event had occurred. The incurred model used historical loss rates adjusted for current conditions. Under an “expected loss” model, losses are measured over the contractual life of the asset. There is no recognition threshold for when an impairment amount should be recognized. All probabilities of losses must be considered, no matter how small. The expected loss model uses the past (historical data), present (current conditions), and future (reasonable and supportable forecasts) to estimate losses.

The goal of the CECL model is to be more proactive as opposed to reactive in recognizing credit losses and to present the net amount expected to be collected, via the use of a contra-asset known as an allowance for credit losses (“ACL”). Therefore, the ACL is the amount the entity does not expect to collect of the amortized cost of the asset during the asset’s contractual life.

SCOPE

The scope of CECL is broad and includes most financial assets that are not valued at fair value through net income. This could include trade receivables that result from reciprocal-type revenue transactions, held-to-maturity debt securities within an investment portfolio, notes receivable, other loan commitments, and lease receivables recognized by a lessor.

One very important exclusion from CECL, relevant to nonprofit organizations, pertains to “promises to give” (or pledges), which are not included. There is often significant credit risk for nonprofits with pledges receivable, and the new guidance will not change the accounting treatment for these. Also excluded are loans and other receivables between related entities under common ownership, and defined contribution employee benefit plan loans.

HOW TO PREPARE

CECL will be effective for fiscal year ends after December 15, 2023. It is important for organizations to be proactive in preparing for the implementation of CECL. To prepare, nonprofit organizations should take an inventory of their financial assets to determine which will potentially fall under the scope of CECL. Nonprofits should begin to think about the potential impairment of these assets under the expected loss model. We believe that the concept of materiality could be significantly in play in analyzing these items from an auditing standpoint, and management can certainly think in those terms as well. Preparation for this matter is a good topic to discuss with your independent auditors.

For more information or questions about this article, or to find out how [Windes can assist](#), please contact Michael Barloewen at mbarloewen@windes.com or **844.4WINDES** (844.494.6337).

RECEIVING A CONTRIBUTION OF CRYPTOCURRENCY? YOUR DONOR MAY NEED A QUALIFIED APPRAISAL

Since the introduction of cryptocurrencies, charities have grappled with the idea of accepting them as a contribution, like receiving a donation of stock. The growth in crypto popularity has prompted more charities to say “Yes.” However, if your charity decides to accept such a gift, you may need to obtain an official appraisal.

The IRS Office of Chief Counsel in January 2023 issued Chief Counsel Advice (CCA) 202302012ⁱ. In that memorandum, the chief counsel affirms that a contribution of cryptocurrency valued at more than \$5,000 will need to have a qualified appraisal and instructs IRS staff to disallow any such deduction claimed that does not provide one (according to IRC 170(f)(11)(C)).



However, donated stocks don't need a qualified appraisal because you can rely on the stock exchange to provide the price quote. So why can't donated cryptocurrencies use their exchange-provided quotes?

Internal Revenue Code (IRC) 170(f)(11)(C) establishes rules for claiming the charitable contribution deduction for individuals, partnerships, and corporations. This code provides exclusions to the qualified appraisal requirement, including for “readily valued property” such as publicly traded securities. Although cryptocurrency markets and exchanges exist, price quotes from those sources do not carry the same authority as traditional stock market exchanges. This is because virtual currencies do not meet the definition of a publicly traded security. As defined in IRS section 165(g)(2), a publicly traded security must be a share of stock in a corporation, a right to subscribe for, or to receive, a share of stock in a corporation, or a bond, debenture, note, certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form.

CCA 202302012 further advises IRS staff that if taxpayers use the cryptocurrency exchange to determine the value of their donation instead of obtaining the qualified appraisal, they will not be excused from noncompliance under the reasonable cause exception.

The IRS defines a qualified appraisal (and a qualified appraiser) in the instructions for Form 8283;ⁱⁱ The appraisal must be prepared by a qualified appraiser in accordance with the substance and principles of the Uniform Standards of Professional Appraisal Practice, must meet the relevant requirements of Regulations Section 1.170A-17(a) and (b), and must be signed and dated by a qualified appraiser not earlier than 60 days before the date you contribute the property.

A qualified appraiser is one who meets all the requirements as of the date they sign the appraisal. This includes individuals who have earned a recognized appraiser designation and who regularly prepare appraisals for compensation (refer to “Part IV, Declaration of Appraiser” in Form 8283 Instructions for the complete list of requirements).

Therefore, if your organization receives a Form 8283 from a donor who is claiming more than \$5,000 for their donation of cryptocurrencies, you should confirm that they are aware that the IRS requires a qualified appraisal to be attached when it is filed with the IRS.

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ⁱ <https://www.irs.gov/pub/irs-wd/202302012.pdf>

ⁱⁱ IRS Form 8283 Instructions: https://www.irs.gov/instructions/i8283#en_US_202112_publink62730rd0e875

TAX CREDITS AVAILABLE TO NONPROFITS UNDER THE INFLATION REDUCTION ACT OF 2022

In general, tax credits do not mean much to tax-exempt nonprofit organizations because they do not pay taxes (typically). However, the programs created by the Inflation Reduction Act of 2022 (the Act) are accompanied by a new provision that will give nonprofits the opportunity to receive available new tax credits and “enable them to take an active role in building the clean energy economy, lowering costs for working families, and advancing environmental justice.”

How can an exempt organization claim a tax credit under the Act? The answer is through the new “Elective Pay” feature (also called “Direct Pay”), where organizations will, for the first time, be able to receive a payment equal to the full value of the tax credits. Unlike grant and loan programs, in which applicants may not receive an award, Direct Pay allows entities to receive their payment if they meet the requirements of both Direct Pay and the underlying tax credit. The steps to apply for Direct Pay are described in detail [here](#); projects must first be completed and implemented, and then an organization must register with the IRS to obtain a registration number. This number will then be included with the tax return used to claim the credit (using form 990-T).

Organizations will be able to use Direct Pay for 12 of the projects included in the Act. For example, Direct Pay can be used for credits for the production of, or investment in, electricity from renewables or clean energy and for purchasing qualified commercial clean vehicles. A complete list of the 12 credits that are eligible for Elective Pay is available [here](#). The complete guidebook to the Act’s programs is available [here](#).

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<https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

<https://www.whitehouse.gov/cleanenergy/directpay/>

<https://www.irs.gov/pub/irs-pdf/p5817g.pdf>



WINDES

AUDIT | TAX | ADVISORY

Our team understands the multiple drivers that contribute to your nonprofit's long-term success. We believe both strategic planning and risk management are key to maximizing value for your stakeholders, e.g., students, patients, association members, donors, and countless other deserving beneficiaries under your mission. Our audit, tax, and advisory teams are committed to helping your organization achieve success in a smart, cost-effective manner.

Windes embraces the legacy of nearly a century of unwavering commitment to professional excellence, personalized client service, and innovative business solutions. Drawing inspiration from our rich history, we forge a path towards a promising future fueled by the visionary leaders and remarkable clients that have shaped our journey.

Our approach combines the personalized touch of a boutique firm with the expertise and resources of a global powerhouse, ensuring that our clients receive an outstanding experience tailored to their specific needs.



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