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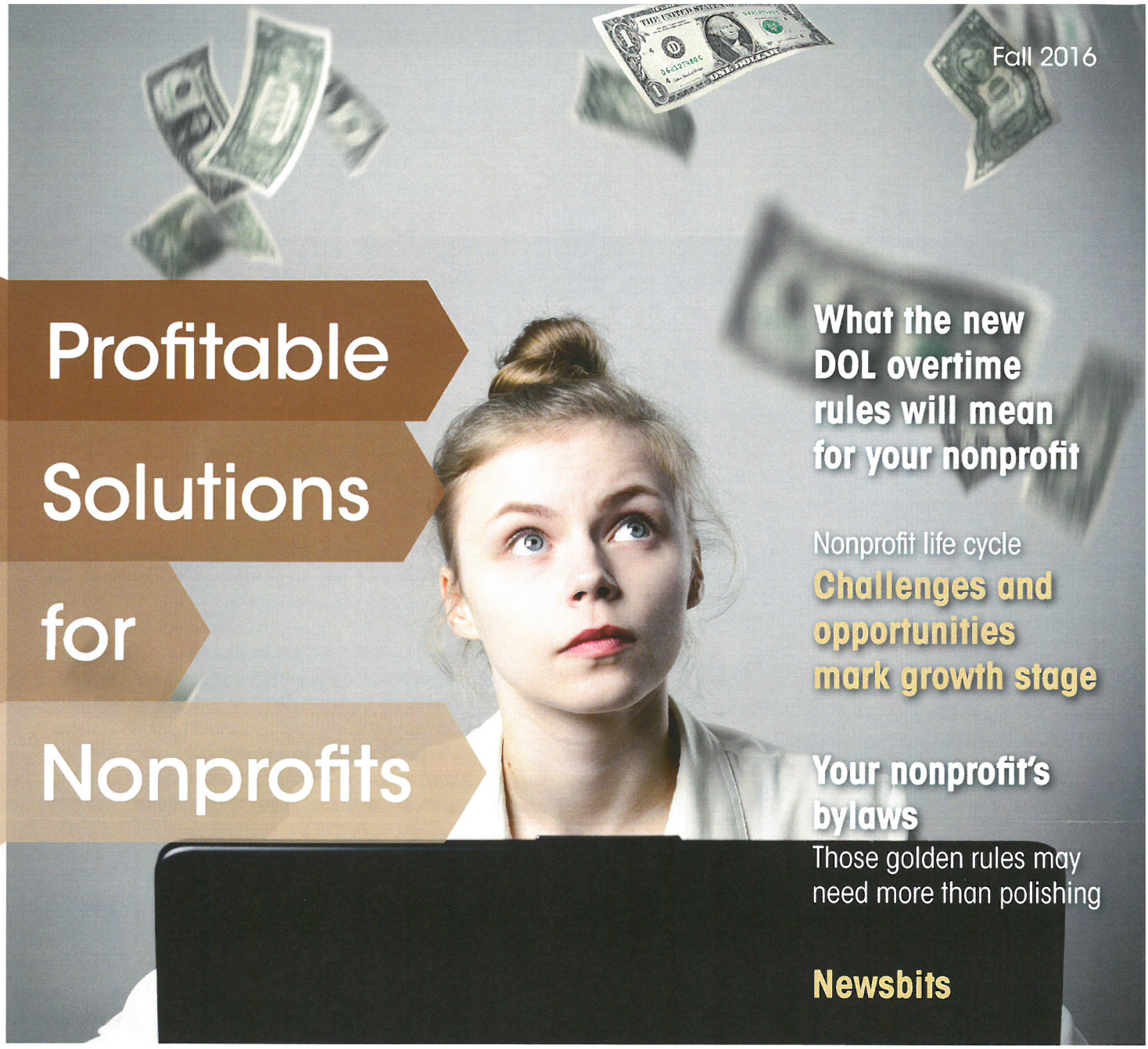
Profitable Solutions for Nonprofits



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Newsbits

What the new DOL overtime rules will mean for your nonprofit

The U.S. Department of Labor's new overtime rules, which will make many more employees eligible for overtime pay under the Fair Labor Standards Act (FLSA), take effect December 1, 2016 — and nonprofits aren't exempt. Even if an organization isn't covered by the FLSA, its employees may be covered as individuals and thus eligible for overtime. Make no mistake: The new rules could have significant repercussions for the compensation of your white-collar workers — and, in turn, your ability to provide services.

The new salary-level tests for exempt workers

The final rule increases the salary-level threshold for white-collar exempt employees from $455 to $913 per week or $23,660 to $47,476 per year. White-collar employees now can only be exempt from overtime if their jobs meet certain tests for executive, administrative or professional employees, and they also are paid an annual salary of at least $47,476.

The new rule also increases the salary threshold for highly compensated employees (HCEs) from $100,000 per year to $134,004 per year. The HCE threshold is used to evaluate the fairness of contributions to an organization's retirement plan. HCEs must receive at least the full standard salary amount — or $913 — per week on a salary or fee basis without regard to the payment of nondiscretionary bonuses and incentive payments. But such payments will count toward the total annual compensation. The standard salary and HCE annual compensation levels will automatically update every three years.

Why it matters even if you aren't covered by the FLSA

The FLSA may apply to 1) businesses or similar entities (what's known as enterprise coverage), or 2) individuals (individual coverage). Under *enterprise* coverage, the law applies to businesses with annual sales or business of at least $500,000. For nonprofits, this coverage applies only to activities performed for a business purpose (for example, operating a gift shop). Income from contributions, membership fees, many dues, and donations used for charitable activities don't count toward the $500,000 threshold.

Under *individual* coverage, employees may be covered by the FLSA if they're engaged in interstate commerce or in the production of goods for interstate commerce — regardless of whether an employee is engaging in such activities for a business purpose. For example, an employee is covered if he makes or receives interstate phone calls, ships materials to another state or regularly calls an out-of-state vendor and uses a credit card to buy food for a homeless shelter.

4 options for compliance with the new rules

Nonprofits have several options available for complying with the new overtime rules. Your options include:

Raising salaries. For employees who meet the duties test, have salary near the new salary level of $913 per week or $47,476 per year and regularly work overtime, you can increase their salaries to meet the new threshold and maintain their exempt status.

Paying overtime above a salary. You could continue to pay newly overtime-eligible employees a salary and pay overtime for any hours in excess of 40 in a week.

Redistributing workloads. You can redistribute workloads to ensure appropriate staffing levels while minimizing overtime.

Adjusting base pay and paying overtime. You could adjust an employee's earnings to reallocate it between regular rate of pay and overtime compensation. The revised pay may be on a salaried or hourly basis but must include overtime payment when the employee works more than 40 hours in a week.

The DOL doesn't require or recommend any one approach.

The impact on nonprofits

The new rule has obvious budget implications — the money to pay overtime to newly eligible employees will have to come from somewhere. Many have expressed concern that compliance with the rule will lead to the cutting of services.

In addition, according to the National Council of Nonprofits, organizations with government grants and contracts could find themselves in the position of having to cover higher labor costs than were contemplated at the time they entered into the agreements. They'll be contractually bound to maintain services despite increased costs that might not be covered by the existing arrangements.

Some exceptions

The new rule has some notable exceptions. The DOL has stated that teachers are exempt, as well as administrative personnel who help run higher education institutions. For example, academic counselors and advisors and intervention specialists aren't subject to the FLSA's overtime requirements if they're paid at least the entrance salary for teachers at their institution. However, other types of nonprofits won't be so lucky with their white-collar employees.

The DOL has also indicated that it won't enforce the higher salary thresholds until March 17, 2019, for providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds. During the nonenforcement period, the DOL will engage in outreach and technical assistance efforts to these providers.

Act now

December 1 will be here before you know it. Consult with your financial advisor to determine your best course of action for minimizing the negative repercussions associated with the new salary-level test if the FLSA applies. ■

Nonprofit life cycle

Challenges and opportunities mark growth stage

Nonprofits generally mature along a standard life cycle. An organization's first steps are typically followed by a period of growth, which, ideally, is less eventful and stressful than those early years. The growth stage — beginning two or three years after "birth" and continuing until "maturation" at around age seven — isn't without challenges. But this period also comes with a sense of accomplishment and the opportunity to diversify and bring in new staff and donors as the organization comes into its own.

Also in this stage, many of the not-for-profit's administrative and operational systems become more formalized as the organization evolves.

Evolution of the mission

It may have seemed blasphemous to even consider when the organization was in its incubatory and birthing stages, but a nonprofit might adjust its mission during the growth stage in the face of new circumstances. Changed demographics, economic developments, or simply greater knowledge might make it appropriate to revise the organization's purpose.

An organization can home in more intensely on a subset of the original mission, or it may shift its focus to another area. The organization may for the first time develop a strategic plan to incorporate the changes to the mission. Such changes might be essential if the not-for-profit is to remain relevant and viable.

Evolution of the board

Perhaps the most common marker of a nonprofit in the growth stage is the change in the focus of the board of directors, from day-to-day operations to governance. While the board will usually continue to be active in operations to some degree, it also must begin to work on strategic matters — the policies, planning and evaluations necessary to pave the path to sustainability.

The composition of the board is likely to change during this time, as founding board members move on. The result could be a larger and more inclusive collection of individuals, preferably with a wider range of skills, talents and backgrounds. Former or current volunteers or clients may ascend to board positions, propelled by their passions for the cause.

Boards also can establish committees at this time. It's important to resist the urge to form too many committees — particularly those concerned with operations. Some organizations implement a three-committee structure, with committees for only internal affairs (for example, finance, HR and facilities), external affairs (for example, fundraising, PR and marketing) and governance.

Growth-stage organizations are generally in a more comfortable financial position, with less uncertainty.

Evolution of the staff

As the demand for services builds and the board expands programming, staffing will naturally progress, as well. The staff, like the board, should expand in the growth stage to avoid burnout. The nonprofit should design a clear organizational structure and hire experienced managers.

At this juncture, the not-for-profit should develop formal job descriptions, with greater job specialization. Employees will now be expected to work under formal systems, following policies and procedures and in a more efficient manner than seen before, during and after the organization's launch. The executive director is generally still the primary decision maker, although he or she may not have time to be as involved in every area of the organization.

Evolution of the finances

Growth-stage organizations are generally in a more comfortable financial position, with less uncertainty. But, for nonprofits, that uncertainty never completely evaporates.

Although nonprofits in the growth stage have established good relations with their key funders, there are still challenges in securing the necessary funding to support current programming. Thus, nonprofits in this stage need to look into ways of maintaining — or, better, expanding — growth, such as diversifying their revenue sources, managing cash flow and developing solid budgets. They should work with financial advisors to identify, monitor and respond to appropriate financial metrics, such as cost per primary outcome, cash reserves and working capital.

Keep calm and carry on

An organization that's made it to the growth stage has overcome some challenging hurdles, but can't afford to become complacent. Rather, the growth stage is the time to leverage what has been learned and steer into even greater success. ■

Your nonprofit's bylaws

Those golden rules may need more than polishing

Has your organization outgrown its bylaws? Sometimes, as a nonprofit expands and matures, the guiding rules set when it was just a twinkle in its founders' eyes need to be revisited and brought up to date.

Revising your bylaws involves more than just altering the language of rarely visited documents. The process provides you with an opportunity to look closely at how your nonprofit is evolving and whether such developments are consistent with your original mission.

Serving as your architectural framework

Bylaws are the rules and principles that define your governing structure. They serve as your not-for-profit's architectural framework. Although bylaws aren't required to be public documents, making them available to the public can boost your accountability and transparency.

Your bylaws might cover such topics as the broad charitable purpose of the organization; the size and function of your board; and the election, terms and duties of your nonprofit's directors and officers. They also usually cover your nonprofit's basic rules for voting, holding meetings, electing directors and appointing officers. And without being too specific, your bylaws should provide procedures for resolving internal disputes, such as the removal and replacement of a board member.

Forming a bylaw committee

Before you attempt to revise the bylaws, make sure you have the authority to do so. Most bylaws contain an amendment paragraph that defines the procedures for changing these rules.

Then consider creating a bylaw committee made up of a cross-section of your organization's membership or constituency. This committee will be responsible for reviewing existing bylaws and recommending revisions to your board or members for a full vote.

It's important that your bylaw committee focus on your not-for-profit's mission, not organizational politics. A bylaw revision is appropriate only if you want to change your nonprofit's governing structure — not to cater to one of your leader's pet projects.

Revising what's important

If your nonprofit is incorporated, you'll need to ensure that any proposed bylaw changes conform with your articles of incorporation, which spell out your nonprofit's purpose and outline its allowable activities. For example, the "purposes" clause in your bylaws must match that in your articles of incorporation. Any new provision or language changes in your bylaws, contrary to the objectives and ideals included in your incorporation documents, could invalidate the revisions.

Make sure your bylaw amendments remain consistent with your tax-exempt purpose. And notify the IRS if they represent a "structural or operational" change, reporting the amendments on your Form 990.

Wanting to change the rules about how you operate suggests that you may have drifted from your original purpose. Bylaw revisions that indicate you've strayed from your initial mission can jeopardize your federal tax-exempt status. By all means, make sure your bylaw amendments remain consistent with your tax-exempt purpose. And notify the IRS if they represent a "structural or operational" change by reporting the amendments on your Form 990.

In addition, review your state's statute that governs nonprofits, because it may contain mandatory provisions that affect your bylaws. In the absence of bylaws, when faced with issues about your governance, your state may dictate a proper course of action. If you don't coordinate your bylaws with such a statute, you may unwittingly hinder your governing board's ability to operate.

An accurate reflection

Through the years, your nonprofit is likely to experience a number of changes: Its constituency and support may grow and its goals and priorities may shift. Your professional advisors can work with you to amend your bylaws and make sure they accurately reflect your organization as it exists today. ■

NEWSBITS

FASB releases final reporting changes for nonprofits

The FASB released its long-awaited guidance on reporting for nonprofits on August 18. Accounting Standards Update (ASU) No. 2016-14, *Not-for-Profit Entities (Topic 958): Presentation of Financial Statements of Not-for-Profit Entities*, replaces the three classes of net assets currently required with only two: those with and without donor restrictions.

The ASU also makes several changes to better present a not-for-profit's liquidity and financial performance. And all nonprofits will be required to report their expenses by nature and function. Also, nonprofits will no longer be required to present operating cash flows using the direct method of accounting, as initially proposed, but may continue to apply either the direct or the indirect method.

The ASU is effective for years beginning after December 2017 and may be applied to interim periods during the first year. More information is available at fasb.org. Talk with your CPA about how the guidance will affect your organization. ■

Donors say messaging affects their giving

Seventy-two percent of respondents in software provider Abila's Donor Loyalty Survey say their decision to give is affected by an organization's messaging. In February 2016, Abila surveyed 1,136 U.S. donors of all ages who had made at least one donation during the previous 12 months.

Seventy-five percent of respondents said they prefer a "short, self-contained email" with no links, while 73% prefer a short (two to three paragraphs) letter or online article. Sixty percent prefer short (under two minutes) YouTube videos.

About 71% of respondents feel more engaged when they receive personalized content. But personalization gone wrong — for example, with misspelled names or irrelevant information — can alienate donors. ■

GuideStar introduces program metrics to profiles

GuideStar has launched a new tier of Nonprofit Profiles called GuideStar Platinum. The no-charge Platinum tier allows nonprofits to report their progress against their missions using metrics they select. GuideStar has collected about 700 suggested metrics, but nonprofits may opt to share the metric(s) they already track and that matter the most to them. For example, a homeless shelter could report the number of people no longer living in substandard housing as a result of its efforts.

According to GuideStar, more than 500 nonprofits signed up within 48 hours of the first announcement of Platinum in April 2016. ■

What do successful fundraisers have in common?

A report commissioned by the Evelyn & Walter Haas Jr. Fund explores how 16 nonprofits are achieving fund-raising success. The report found striking commonalities in the respondents' mindsets about fundraising from individual donors. Notably, all of the organizations distribute fundraising responsibilities across board members, staff and volunteers and regard fundraising as core to the organization's identity. ■

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Take Advantage: Free Financial Literacy Resources

Many schools and nonprofits serving 9th to 12th grade youth lack the time and resources to teach financial literacy to their students. In Louisiana and Texas, however, one organization has partnered with funders to provide this valuable training at no charge to qualified schools and nonprofits.

Creator of the online financial literacy education module is EverFi™, a national organization headquartered in Washington, DC. EverFi's 9-module platform takes 6-8 hours. It covers a variety of topics including savings, banking, credit cards and interest rates, credit scores, financing higher education, renting vs. owning, taxes and insurance, consumer protection, and investing. Through the course, students will be able to meet many of life's important milestones, such as paying for college or buying a house or car.

This easy-to-use online digital financial literacy course incorporates video, animations, and interactive activities to bring complex financial concepts to life. EverFi tracks individual student progress and knowledge gain and provides students who successfully complete the course with certification in financial literacy, which can be a valuable tool for job, college, and internship applications. Also, importantly to teachers and students, EverFi is in full compliance with LA Act 677, student data privacy legislation.

Partnering with EverFi in Louisiana is the Credit Bureau of Baton Rouge Foundation, which pays the cost of this resource, teacher training, and 24/7 support for teachers at any school or nonprofit teaching high school-age children in Louisiana.

In Texas, dozens of funders have stepped up to partner with EverFi on behalf of high school-age children.

For more information on the EverFi program in Texas and Louisiana, please contact Trey Medbery, EverFi's Southern Region leader, at 504.330.4328 or trey@everfi.com. You can also visit https://everfi.com/k12/everfi-k-12-finliteracy/. Teachers can get started immediately by creating an account at www.everfi.com/login.

A great source of more general resources and programs is Jump$tart, which is a coalition of organizations dedicated to improving the financial capability of individuals by providing access to financial education programs and resources. To learn more about Jump$tart, visit http://www.jumpstart.org/.

We hope that you will take advantage of and spread the word about financial literacy resources that are available.