



PERSPECTIVES

NOT-FOR-PROFIT INDUSTRY INSIGHTS



Nonprofit Trends: The 2016 M+R Benchmarks Study

If there's one important takeaway from the 2016 M+R Benchmarks Study, it may be how rapidly the nonprofit universe is changing in the face of online fundraising, marketing, and advocacy efforts. Currently in its tenth year, the study's goal is to look at how nonprofits and their supporters are behaving today to help them prepare for changes in the future.

The following are five key facts from the 2016 study that would have been unimaginable in 2006:

- 13% of online gifts were made from mobile devices. This is likely the result of both user preference and the decision by nonprofits to facilitate mobile access.
- For every 1,000 email subscribers, nonprofits had 355 Facebook fans, 132 Twitter followers, and 19 Instagram followers — all up from basically zero in 2006.
- Nonprofits invested four cents in digital advertising for every one dollar of online revenue. Considering that overall online revenue rose by 19% during the last year, digital advertising is increasingly

important for identifying, acquiring, and converting new donors and retaining current ones.

- Email volume increased substantially. On average, nonprofits in the study sent the typical subscriber on their lists 49 email messages in 2015.
- Monthly giving accounted for 17% of all online revenue and grew by 24% across all sectors in 2015. In the first Benchmarks Study in 2006, only about half of the nonprofit participants offered a recurring giving program.

The study used data gathered from 105 nonprofit organizations of various sizes and in various sectors. The complete study is available at www.mrbenchmarks.com.

Can We Help?

Our firm offers a broad range of audit, tax information, return preparation, and executive board consulting services to nonprofit organizations. If we can be of service to you, please call.

The general information provided in this publication is not intended to be nor should it be treated as tax, legal, investment, accounting, or other professional advice. Before making any decision or taking any action, you should consult a qualified professional advisor who has been provided with all pertinent facts relevant to your particular situation.

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New Overtime Rules

In May, the U.S. Department of Labor (DOL) issued a final rule updating white collar overtime regulations, increasing the exemption thresholds and extending overtime pay protections to over four million workers within the first year. How will the new rules affect not-for-profits?

The final rule raises the salary threshold for exemption from overtime protections, adjusting it from \$455 a week (\$23,660 annually) to \$913 a week (\$47,476 annually), effective December 1, 2016. Unless exempt, employees covered by the Fair Labor Standards Act (FLSA) must receive pay for work in excess of 40 hours a week at a minimum rate of one and one-half times their regular rate of pay. Neither the FLSA nor the DOL regulations provide a blanket exemption from overtime requirements for nonprofit organizations.

Is the Employee Covered by the FLSA?

In order to be subject to overtime requirements, employees must be "covered" by the FLSA. There are two types of coverage: *enterprise* and *individual*. Under *enterprise* coverage, the FLSA applies to businesses with annual sales of at least \$500,000. However, nonprofit charitable organizations are not considered covered enterprises unless they engage in commercial activities that result in a sufficient amount of sales, such as operating a gift shop. Enterprise coverage does not apply to the organization's charitable activities. Thus, income from contributions, membership fees, dues, and donations (cash or noncash) used for charitable activities are not counted toward the \$500,000 threshold.

In addition, certain entities are always covered by the FLSA, regardless of the amount of gross sales. These entities include hospitals, schools and preschools, government agencies, and businesses providing medical or nursing care for residents.

However, many organizations that are not covered by FLSA on an *enterprise* basis are likely to still have some employees who are covered on an *individual* basis. Generally, to be covered under the FLSA, the employee's work activities must in some way be connected to interstate commerce, whether through making out-of-state phone calls or otherwise.

Applying the Overtime Tests

Once it's determined that the employee is covered by the FLSA — whether on an enterprise or individual basis — the individual will be exempt from the overtime protections only if certain conditions are met. Under individual coverage, to qualify for exemption, an employee generally must be salaried, be paid at least \$913 per week, and primarily perform executive, administrative, or professional duties.

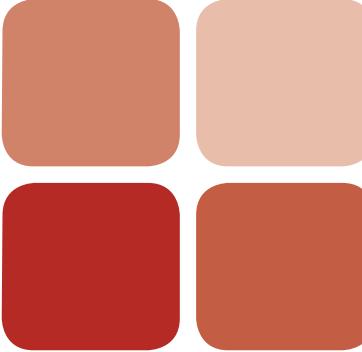
Many employees of nonprofit organizations will not be affected by the final rule, including:

- Hourly workers*
- Workers with regular workweeks of 40 or fewer hours
- Salaried workers who do not primarily perform executive, administrative, or professional duties*
- Highly compensated workers — those who earn more than \$134,004 in a year

Contact us to help answer your questions about the new overtime rule.

* These employees may be eligible for overtime under other existing rules.





Noncash Gifts? Mind Your Gift Acceptance Policy

Nonprofit organizations welcome gifts of cash. But what if a donor wants to give a noncash gift, such as real estate, appreciated stock, or a work of art? Some gifts may not be appropriate for your organization, while others may have hidden costs. Having a formal gift acceptance policy in place provides much-needed structure — for both your organization and potential donors.

Purpose of a Gift Acceptance Policy

A gift acceptance policy serves three primary functions. It defines the types of assets you will or will not accept; it sets guidelines for the circumstances under which gifts are accepted; and it defines how certain gifts will be handled.

For example, suppose you wish to accept vehicles as donations. Your gift acceptance policy should define what types of vehicles are considered acceptable and in what condition, how the vehicle will be transferred and transported, what paperwork will be required by the donor, and how the value will be determined.

Another reason to have a gift acceptance policy is tax compliance. An exempt organization reporting more than \$25,000 of aggregate noncash contributions on Form 990 — or that, during the year, received contributions of art, historical treasures, or qualified conservation contributions — must complete Schedule M (*Noncash Contributions*). Schedule M specifically asks whether the organization has a gift acceptance policy that requires "non-standard contributions" to be reviewed.

What To Include

Gift acceptance policies vary based on the nature and resources of the organization. In general, however, a well-constructed gift acceptance policy will address the following:

- Type and form of acceptable and unacceptable gifts
- Procedures for accepting specific noncash gifts, such as vehicles or real estate

- Circumstances when the organization should seek professional advice prior to receiving a gift
- Description of criteria for acknowledgement and donor recognition and details of how such recognition is to be carried out
- Reporting requirements and responsibilities

The policy should also identify the circumstances when appraisals are required and what is a "qualified appraisal" under the tax rules. You'll also want to have the policy reviewed by legal counsel and establish a procedure for making future amendments. When completed, the policy should be posted to your website so that it is easily accessible to current and prospective donors.

Outlining the types of gifts you will accept lays the groundwork for decision-making and provides your leadership and development staff with guidance about the types of gifts they can solicit and the types they should avoid. A well-thought-out gift acceptance policy also provides donors and their professional advisors with the guidance they need for tax and other purposes.

"Another reason to have a gift acceptance policy is tax compliance."

Considering Bitcoin?

Though bitcoin and other forms of virtual currency receive a great deal of media attention, they are still in the early stages of their development. That's why, if you are considering accepting bitcoin donations, you might want to consider the following:

- The rules governing ownership and transfer of virtual currencies are complex — and therefore create opportunities for fraud.
- You might have difficulty locating a reliable exchange for converting the virtual currency into regular money. For example, in February 2014, Mt. Gox, the largest bitcoin exchange at that time, filed for bankruptcy in Japan, claiming it had lost nearly \$480 million in virtual currency.

- For any donation greater than \$5,000, the IRS requires that the donor seeking a deduction provide a "qualified appraisal" of the donated property. Though an exception exists for "readily valued property," such as cash or publicly traded securities, it does not currently extend to virtual currency. As a result, donors may face difficulty convincing the IRS of the value of their donations.

Talk to us before you decide to take donations in virtual currency.

Proposed Rules on Nonqualified Deferred Compensation Mostly Favorable for Tax-exempt Employers

The newly proposed regulations by the IRS would greatly impact nonqualified deferred compensation plans maintained by tax-exempt employers under Section 457(f). But the impact for the most part is favorable, permitting employees to defer taxes under certain compensation arrangements.

The new rules apply primarily to ineligible deferred compensation plans — those that do not meet the terms and conditions for eligible plans under Section 457. Because such terms currently cap salary deferrals at \$18,000 per year (among other limitations), many employers turn to ineligible plans for highly compensated employees. But ineligible plans have walked a fine line in terms of tax deferral, having had to prove a *substantial risk of forfeiture* in order to achieve the deferral.

The proposed rules still require a substantial risk of forfeiture, but they clarify

exactly how this is done. Under the proposed regulations, employees may defer current compensation if the following requirements are met:

- The present value of the amount to be paid upon lapse of the substantial risk of forfeiture must be materially greater than (more than 125% of) the amount the employee would be paid if there wasn't a substantial risk of forfeiture.
- The employee must commit to provide substantial services for at least two years.
- The deferral election must be made in writing prior to the beginning of the year and document the employee's agreement to continue service.

Additionally, the proposed regulations legitimize the practice of rolling the risk of forfeiture, whereby the vesting date is continuously pushed out. The proposed rules permit this practice, provided that

the election to push out the vesting date occurs at least 90 days prior to the date the compensation would have otherwise vested.

The proposal also legitimizes and clarifies the practice of pushing out vesting dates on the condition that the employee adheres to the terms of a noncompete agreement. The new regulations would require that the right to compensation be clearly tied to the terms of the noncompete agreement, that the employer make reasonable efforts to verify adherence to the noncompete requirements, and that the circumstances support a bona fide interest of the employer in subjecting the employee to a noncompete agreement.

The proposed regulations will apply to compensation deferred under a plan for calendar years beginning after the date the IRS adopts the proposed regulations as final. Until then, employers may rely on the proposed regulations.

New Requirement for Social Welfare Organizations

Recently established social welfare organizations must now notify the IRS that they are operating as tax-exempt organizations under Code Section 501(c)(4) of the tax law. The new requirement was included as a provision in the Protecting Americans from Tax Hikes (PATH) Act of 2015.

The Submission Process

Organizations are required to submit Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*, to the IRS within 60 days after the organization is established. The notification should

include the organization's name, address, and taxpayer identification number; the organization date; the state or other jurisdiction under which the entity was organized; the annual accounting period; and a statement of purpose.

The IRS may assess penalties of \$20 per day, up to a maximum of \$5,000, for failing to submit the notification by the due date without reasonable cause.

Some Relief

The new regulations contain some exceptions. Social welfare organizations that either applied to the IRS for a written determination of tax-exempt status or

filed at least one annual return or notice on Form 990, Form 990-EZ, or Form 990-N after December 18, 2015, but on or before July 8, 2016, are not required to submit the notification.

Not a Substitute

Organizations should bear in mind that submitting the notification is not a request for an IRS determination of tax-exempt status. Organizations seeking 501(c)(4) status must apply separately to the IRS for a written determination.

Please contact us if you have questions about these requirements.