

We are recommending that organizations with 403(b) plans discuss with their auditors whether or not their plans will require an audit and determine what steps should be taken in preparation for this process.

Loeb & Troper LLP has significant experience in conducting audits of employee benefit plans. If you need guidance or require any further elaboration on this issue, please contact Joseph Blatt, CPA, Partner, at [jblatt@loebandtproper.com](mailto:jblatt@loebandtproper.com).

## FIN 48 at a Glance

Financial Accounting Standards Board (FASB) Interpretation No. 48, Accounting for Uncertainty in Income Taxes (FIN 48), clarifies the necessary accounting for uncertainty in income taxes under FASB Statement No. 109. It also prescribes a recognition threshold and measurement attribute that could result in additional disclosures required to be included in the December 31, 2008, financial statements. Additionally, the footnote disclosure from the financial statements will also be included as part of Schedule D of the new IRS form 990 effective for fiscal year 2008.

Under FIN 48, an organization must determine whether it has or will take a tax position and whether that position is sustainable under scrutiny by the taxing authorities. FIN 48 provides for a two-step process to evaluate the tax position: recognition and measurement. In the first step, the organization will determine whether the tax position will "more likely than not" be sustained (based upon the technical merits of the position) upon examination, including resolution of appeals, litigation, etc. In regard to measurement, an amount will be recorded using a greater than 50 percent threshold of the benefit being realized upon settlement.

In order to prepare for FIN 48, you must perform a review of your previously taken uncertain tax positions such as a decision not to file a form 990-T, the classification of an unrelated activity or excessive UBIT. There are many potential activities that will fall under its umbrella of reporting with varying levels of documentation. If you have any questions, please contact Allan M. Blum, CPA, Partner, at [ablum@loebandtproper.com](mailto:ablum@loebandtproper.com).

On 10/17/08, we were notified that FIN 48 has been deferred for an additional year for private companies.

## SHORT SUBJECTS

### SPEAKING ENGAGEMENTS

**Financial Managers Assoc. of Rehab Facilities of NY**  
*The New 990: What You Should Know*  
David M. Rottkamp, CPA, Partner  
October 1, 2008

**AICPA National Tax Conference**  
*A Practitioner's Perspective on the New 990*  
Frederick H. Rothman, Director of Tax Compliance  
October 28, 2008

**2008 NYSSCPA Exempt Organization Conference**  
*1. Obtaining, Maintaining & Retaining Tax Exempt Status*  
*2. Form 990 In Depth: Part II*  
Frederick H. Rothman, Director of Tax Compliance  
December 11, 2008

### NYAHS Regional Administrator Meetings

*Strategic Implications of the New 990*  
Allan M. Blum, Partner, and David M. Rottkamp, Partner  
Fall 2008 Seminar Series

### NEW 990

The new 990 is one of the most important changes to affect the not-for-profit industry in recent times. Notwithstanding the importance of the specific technical issues, we believe that the overarching governance implications embedded in the new 990 need to be understood and managed appropriately by executives and board members beginning immediately. For a copy of our guide, *Strategic Implications of the New 990* or for further questions, please contact us at [New990@loebandtproper.com](mailto:New990@loebandtproper.com).

### MEL ZACHTER HONORED

Mel Zachter, CPA, Partner, has been awarded the prestigious 2008 Michael H. Urbach, CPA Community Builder Award, sponsored by the Council of Community Services of New York State, Inc., and the New York State Society of Certified Public Accountants. This award recognizes outstanding achievements of a CPA with active charitable board leadership.

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## Governance

# The New Risk Standards: Implications Beyond the Audit



**Jacob Beniawski, CPA, Partner**, is experienced in providing audit services to nursing homes, home health agencies, hospitals, religious institutions, and HMOs. In addition, he performs audits in accordance with OMB Circular A-133 and the HUD Audit Guide. He is also versed in Statutory Audit Requirements (NYS and NAIC guidelines for HMOs).

Mr. Beniawski, well known for his technical prowess, has planned for, prepared and reviewed the following cost reports: ICR, RHCF-4, RHCF-2, MLTC-MMCOR, AHCF-1, Personal Care, Schedule of Certified Costs (NYS and HUD), Long-Term Home Health Care, Certified Home Health Care, and Medicare — all programs.

AS NOT-FOR-PROFIT ORGANIZATIONS continue to plan for audits that adhere to the new risk assessment standards, we have found that there is a lack of understanding, particularly at the board level, regarding what the new standards imply for the infrastructure and governance of the not-for-profit. The eight new statements on auditing standards collectively referred to as the "Risk Assessment Standards" have been issued by the Auditing Standards Board of the AICPA and provide guidance concerning the auditor's assessment of the risks of material misstatement (whether caused by fraud or error) in a financial statement audit; design and performance of tailored audit procedures to address assessed risks; audit risk and materiality; planning and supervision; and audit evidence.

While it is the external auditor who must design and perform audits that meet these standards, the burden of ensuring that internal controls are designed to withstand these standards lies with the board and management of the not-for-profit.

Understanding the key areas of an audit, along with the underlying goals, is essential to understanding how not-for-profits will plan for audits and implement procedures to reduce risk under the standards.

## I. GOAL

The goal behind the standards is to enhance auditors' application of the audit risk model by requiring auditors to obtain a more in-depth understanding of an organization in order to better identify risks of material misstatement within the financial statements. The underlying objective is to create an improved linkage between control risk and inherent risk and the nature, timing, and extent of audit procedures performed in response to those risks. It is no coincidence that these standards are being implemented against a climate of increased scrutiny and transparency and a greater shift to governance issues in both the private and public sectors.

... the risk of material misstatement refers to control risk and inherent risk. . . They are the organization's risks, not the auditor's.

In order to comply with the standards, the auditor must gain a deeper understanding of the organization and its environment, including its internal controls, to identify the risks of material misstatement in the financial statements and what the organization is doing to mitigate them. This will require the auditor to perform a more rigorous assessment of the risks of material misstatement by performing risk assessment procedures. It is important to

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note that the risk of material misstatement refers to control risk and inherent risk, which are two independent variables. They are the organization's risks, not the auditor's. Audit risk, on the other hand, is the risk that the firm will issue a clean opinion when the financial statements contain a material misstatement.

Auditors will have to link audit procedures—the nature, timing and extent of what they do—to the risk of material misstatement. Since default of control risk to the maximum level is no longer allowed, CPAs will have to use their judgment, based on their risk assessment procedures, to tailor their audit to the risks identified.

## II. IMPLICATIONS

There are three key areas of focus that will permit the auditor to conduct more rigorous audits:

- Understanding of the entity and its environment
- Understanding the design and implementation of internal controls
- Identification of risk factors

### UNDERSTANDING OF THE ENTITY AND ITS ENVIRONMENT

In order to comprehensively understand an organization, it becomes essential to be aware of the structure and governance, the activity and regulatory environment, the nature of the entity, the objectives and strategies, measurement review of financial performance and the internal audit function. Essentially, the auditor must understand the business before he can accurately assess control and inherent risk and opine on the financial statements. Moreover, the auditor must understand not only the individual entity's business but also the industry in which it operates and all the unique and common characteristics of that industry in order to determine what the risks are and whether they are material in nature. Ensuring this level of understanding will require a strong working knowledge of industry issues, such as:

- Funding sources
- Fundraising
- Competition
- Regulatory setting
- Specialized industry accounting practices and principles
- Specialized industry activities
- Industry reporting requirements

It will also require the auditor to gain an in-depth knowledge of the specific characteristics unique to each organization, such as:

- Mission
- Board structure
- Mission/raison d'être
- Competitors
- Service providers
- Future trends and strategies
- Compensation
- Performance measurements

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### UNDERSTANDING THE DESIGN AND IMPLEMENTATION OF INTERNAL CONTROLS

Without a deep understanding of the design and implementation of the internal control system, it is impossible to conduct an audit that adheres to the new standards. This understanding is typically achieved through the following:

- Review of the control environment
- Risk assessment
- Communication
- Monitoring

Typically we conduct a formal and informal review of significant areas that comprise the entire control system. In addition to the traditional areas of review, such as review of policies and procedures and financial reporting, we also assess such areas as organizational structure, board participation, commitment to education, and management's philosophy and communication, particularly upstream communication. Typically these are achieved through the use of interviews, flowcharts and walk-throughs. With our specialized practice areas, we have found that these informal areas of review can be far more illuminating than the formal review areas. We have a unique ability to benchmark activities in these areas based on our specific focus and training in our key industries—something that generalist accounting firms cannot typically provide.

### IDENTIFICATION OF RISK FACTORS

In our experience, risk areas can be too easily overlooked in not-for-profit organizations, particularly in small to mid-sized organizations. In an environment of increased public information, greater demands on funding, an economic downturn and a presidential election year, risk should be revisited and redefined within each organization to include not only existing areas of risk but also emerging areas of risk. Common emerging areas may include foreign activity, public image, competition and labor issues. We typically include the following areas and customize the specific areas of inclusion based on the subindustry of the sector and the unique issues within the organization:

- Structure and governance
- Risk assessment
- Mission
- Regulatory environment
- Economic, political and social environment
- Revenues and fundraising methods
- Products or services and markets
- Major assets/liabilities and nature of expenses
- Investment activities
- Financial sources
- Financial reporting
- Use of financial statements
- Objectives and strategies and related business risks
- Measurement and review of financial performance

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In order to ensure that an organization has a positive audit outcome and experience, there are three major implications that should be taken into account:

- Organizations should ensure that their internal control system can support the rigor of audits conducted under these standards.
- Planning and executing an audit will take longer than it did in the past.
- Working with an auditor who has industry-specific experience and a thorough understanding of risk areas becomes a key to ensuring a successful audit.

The standards will result in more effective audits and will help shift focus from less "important" areas to those areas where the greatest areas of deficiency may emerge. Leading organizations are embracing the standards as an opportunity to ensure transparency and strong governance. They will ensure that internal controls are designed to meet or exceed the specific organizational and industry factors that can create deficiencies.

For further information, please contact Jacob Beniawski, CPA, Partner, at [jbeniawski@loebandtroper.com](mailto:jbeniawski@loebandtroper.com).

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## IRS Focuses on 403(b) Plans

In July 2007, the Internal Revenue Service (IRS) issued the first comprehensive regulations for 403(b) plans in over forty years. The goal of these regulations is to bring 403(b) plans closer to the standards set for other tax-deferred salary reduction plans, such as 401(k) plans. 403(b) plans are commonly used by educational institutions, including most private schools in New York State.

The regulations will require a plan's sponsor to set forth the terms of its plan in writing and be held accountable for enforcing the terms, which may require two significant changes:

1. the development of a written plan document, which should include eligibility requirements, vesting requirements and administrative procedures;
2. an annual audit of the plan.

With the rules effective for plan years beginning January 1, 2009, there will be a resultant audit of Form 5500 for December 31, 2008 and June 30, 2009, for the first time.

The rules governing pension plan audits are complex but, at a glance, incorporate the following:

- If the organization had over 100 participants in the plan in the prior year and in the current year, it is likely that an audit will be required. (There are exceptions that apply to organizations with 80 to 120 participants that meet certain criteria.)
- Audit of the plan includes not only a financial audit but a compliance audit as well. This includes eligibility as well as participant data. The AICPA has issued guidance on these audits in their guide to Audits of Employee Benefit Plans.