

perspectives

March–April 2016

A publication from
Benesch Friedlander
Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight

**American
Logistics Aid Network**
Mobilizing for Emergency Response

The American Logistics Aid Network (ALAN) was founded by several professional and trade associations that came together after Hurricane Katrina to help provide humanitarian relief. Today, ALAN comprises hundreds of supply-chain businesses that stand poised to respond in the event of disasters. These businesses are experts in transportation, warehousing, cold storage and distribution, and can help locate and move goods from suppliers to affected communities rapidly and efficiently.

Who Are ALAN's Partners?

ALAN works in tandem with National Voluntary Organizations Active in Disaster (NVOADs)—including the American Red Cross, Feeding America and the Salvation Army—as well as state and federal emergency agencies, including FEMA, the Federal Emergency Management Agency.

How Does ALAN Work?

ALAN's web portal serves as a clearinghouse for essential supplies, goods and services during times of crisis. Relief organizations post urgent needs on the portal. These might include requests for local warehouse space, transportation or material handling equipment, or advice on how to best move products into position. ALAN members view the requests and respond to those that match their capabilities. For example, ALAN members have responded to requests for forklifts and pallet jacks to help with tornado recovery; transported tool trailers to help communities rebuild in the wake of devastating floods; and donated office and

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What Questions Should a Not-for-Profit Ask When Hiring a General Contractor or a Construction Manager?



S. Brent Baker



Richard D. Kalson

1. How does our “not-for-profit mission” align with your construction company's core values?

Choosing a construction partner is perhaps the most important decision that is made by an owner in the pre-construction phase of the project. The general contractor/construction manager (GC/CM) should have a culture and set of values that directly supports or is relatable

to the mission of the charitable organization. When a GC/CM can draw a direct connection between its own charitable mission and the charity itself, the GC/CM, led by management, garners companywide support leading to the needed focus, effort and passionate execution of your project. Simply put, an aligned GC/CM will care more than a construction company with nonaligned ideals.

2. Would your company consider getting involved as a volunteer or board member with our not-for-profit on a long-term basis?

Highly reputable construction companies often seek to maximize long-term relationships with community partners and would be amenable to volunteering or becoming part of your board. The benefits are twofold:

- When a CM/GC understands your organization's people, processes, current facilities and objectives well, it translates into a higher probability that your new or renovated facilities will meet your organization's long-term needs.
- The construction company now has “skin in the game.” There will be a heightened emphasis on quality and ensuring that the building is done right the first time. An ownership mentality versus a one-and-done attitude can be a valuable asset.

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warehouse space to help the American Red Cross prepare for hurricanes.

ALAN's web portal promotes targeted donations. Instead of sending random goods and supplies that could overwhelm disaster recovery efforts, ALAN businesses respond to specific requests for help from those on the ground. They channel goods and services efficiently, providing support when and where it is needed most.

What Makes ALAN Unique?

ALAN's solution to emergency relief brings together the unique capabilities of business, voluntary organizations and relief agencies, forming strong partnerships between public, private and not-for-profit organizations. ALAN enables supply chain providers to support disaster relief in ways that highlight their strengths and engage their business interests. And by offering logistical expertise and services to humanitarian organizations, ALAN enables them to focus on what they do best: providing assistance to stricken communities. Their strategy for responding to emergencies increases the capacity of relief agencies, saves money, and eliminates duplication of effort and waste by matching expressed needs with potential providers.

Click [here](#) to learn more about ALAN.

IRS Notes



Martha J. Sweterlitsch

New Form 990-N Submission Website Now Open

Form 990-N electronic submissions should now be made through IRS.gov instead of Urban Institute's website. For the filing link and more

information on how to file, visit the [Form 990-N Web page](#).

Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ*, is used by small, tax-exempt organizations for annual reporting and can only be submitted electronically.

Registration required

Form 990-N filers will be required to complete a short, one-time registration before submitting their electronic form to IRS.gov.

Additional information

- Form 990-N, *e-Postcard*, [Frequently Asked Questions](#)
- Form 990-N, *e-Postcard*, [Required Information](#)
- Exempt Organizations educational website, [StayExempt.irs.gov](#)

New Notification Requirements for Social Welfare and Community Benefit Organizations 501(c)(4)

On December 18, 2015, Congress enacted new requirements for organizations that describe themselves under section 501(c)(4) of the Internal Revenue Code, commonly known as social welfare or community benefit organizations. After they have been established, organizations that intend to operate under section 501(c)(4) will have 60 days from the date of establishment to notify the IRS that they are operating as a section 501(c)(4)

organization. The new requirements direct the IRS to issue regulations in order to implement the notification procedures. Until these regulations are issued, organizations need not submit any notification.

For section 501(c)(4) organizations in existence before December 19, 2015, the new requirements provide that these organizations notify the IRS of their operations within 180 days of that date, but only if they had not submitted:

- Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, or
- Form 990, 990-EZ, 990-PF, or 990-N, annual information return or notice of exempt organization.

For section 501(c)(4) organizations established before the implementing regulations are issued, the regulations will provide transition rules that extend the 60- or 180-day period, as may be applicable, in order to comply with the regulations.

Once the regulations have been issued and a process is in place, the IRS will acknowledge receipt of a notification within 60 days. In any event, an organization will still have to file an application seeking tax-exempt status under section 501(c)(4) in order to obtain an IRS determination letter recognizing its tax-exempt status under section 501(c)(4).

For more information on these topics, please contact **Martha J. Sweterlitsch** at mjsweterlitsch@beneschlaw.com or (614) 223-9367.

IRS Proposes Rules for Type I and III Supporting Organizations



Martha J. Sweterlitsch



Jessica N. Angney

Supporting Organizations (SOs) are a very specific subcategory of organizations exempt under Section 501(c)(3) of the Internal Revenue Code. They are treated as public charities for tax purposes, but they derive their “public” status from the organization(s) they support. This support can be either financial or operational, but the SO must be related or connected to the sponsored organization either through (1) organizational control, a Type I SO, (2), supervisory or management control, a Type II SO, or (3) responsiveness and integral part tests, a Type III SO. In order to maintain its public charity status, an SO cannot be controlled by certain disqualified persons. The proposed rules seek to define “control” in this context and clarify other existing requirements for Type III SOs.

Under current rules, Type I and Type III SOs are prohibited from accepting contributions or gifts from individuals who directly or indirectly control the governing body of their supported organizations, regardless of whether that control is exercised individually or in combination with related persons. This prohibition extends to persons related to any person holding such control (Reg. §1.509(a)-4(f)(5)). Related persons include family members and 35-percent controlled entities as described in Code Sec. 4958(f). The proposed regulations define a person who has “control” over a supported organization, for

this purpose, as being someone who—alone or by aggregating his or her votes or positions of authority with related persons (as defined in Code Sec. 509(f)(2)(B)(ii)-(iii))—can require the governing body of the supported organization to perform any act that either significantly impacts its operations or prevents the governing body of the SO from so acting.

A second aspect of the proposed regulations is to clarify existing responsiveness and notification requirements for Type III SOs. The proposal states that the SO must deliver the required notification documents to each of its supported organizations by the last day of the fifth month following the end of the tax year in which the support it is reporting was provided. The proposed regulations also revise Reg. §1.509(a)-4(i)(3)(i) to clarify that a SO must be responsive to the needs and demands of each of its supported organizations in order to meet the responsiveness test.

Third, the proposals address the ways in which a Type III SO can be functionally integrated with its supported organizations, particularly in a parent-subsidiary relationship. The supported and supporting organizations must be part of an integrated system, and the supporting organization’s activities must be typical for the parent organization in an integrated system. There are also clarifications for SOs that support governmental entities.

Finally, the proposed regulations speak to how a Type III SO can meet the integral part test if it satisfies a distribution requirement and an attentiveness requirement. The proposed regulations revise Reg. §1.509(a)-4(i)(5)(ii) to clarify that a supporting organization must make distributions as described in Reg. §1.509(a)-4(i)(6) to satisfy the distribution requirement. The proposed regulations revise and clarify the list in Reg. §1.509(a)-4(i)(6) of

what counts toward the distribution requirement and make it an exclusive list, and also remove the provision in Reg. §1.509(a)-4(i)(5)(ii)(B) that reduces the distributable amount by the amount of taxes subtitle A of the Code imposed on a supporting organization during the immediately preceding taxable year. Of particular interest is the explanation of reasonable and necessary expenses as “(A) Administrative expenses paid to accomplish the exempt purposes of the supported organization, which do not include expenses incurred in the production of investment income or the conduct of fundraising activities, except as provided in paragraph (i)(6)(iii)(B) of this section; and (B) Expenses incurred to solicit contributions that are received directly by a supported organization, but only to the extent the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation, as substantiated in writing by the supported organization.”

This article is not intended to be an exhaustive exploration of the topic. Those needing further information should read the proposed regulations and submit comments if concerned. The link for reading and commenting is [here](#).

For more information on this topic, please contact:

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Form 1023-EZ in Practice: Reflecting On Year One



Victoria L. Stephenson



Heather E. Baird

On July 1, 2014, organizations seeking 501(c)(3) tax-exempt status were provided with a new streamlined application process in the form of Form 1023-EZ. The traditional Form 1023 is a 26-page form that can take applicants over 9 hours to complete. Furthermore, at the time Form 1023-EZ was released, more than 75,000 Form 1023 applications were in the IRS queue, some of which had been awaiting review for more than a year.

Form 1023-EZ, at a mere three pages, requires eligible applicants to attest that the entity meets exempt status requirements, does not require the submission of corporate formation documents, and is submitted entirely electronically. Eligible entities are generally not-for-profit corporations with \$50,000 or less in annual gross receipts and \$250,000 or less in assets (always consult the Form 1023-EZ instructions before determining filing eligibility). Form 1023-EZ is intended to provide a quicker, more convenient exemption approval process for smaller organizations with routine operations and bases for tax-exempt status, thereby expediting the long wait times for the review of larger and more complex entities submitting the traditional Form 1023.

Now that Form 1023-EZ has been in use for more than one year, the IRS has released its First Year Report, summarizing the impact of Form 1023-EZ. The streamlined application process was used by 52% of all exemption applicants during its first year and the process has, in fact, resulted in faster processing times for the IRS—13 days on average. Additionally, the IRS approved 95% of all EZ applications submitted and closed during the first year.

During Form 1023-EZ's first year, its filers were primarily made up of youth development programs, Christian organizations, animal protection and welfare groups, human service organizations, and parent-teacher groups. The rollout of Form 1023-EZ also correlated with increased satisfaction when compared to filers of the traditional Form 1023 during the same time period, as well as significantly greater overall satisfaction with the IRS tax-exemption application process for filers of Form 1023-EZ and the traditional Form 1023 alike.

However, the results of first-year filings show that, in some cases, Form 1023-EZ may create more complications for applicants and the IRS after exempt status has been expeditiously granted. Roughly 3% of 1023-EZ applications were selected for predetermination review. In a predetermination review, the reviewing agent would review the application and conduct follow-up research in order to make a determination to either approve or reject the application. About 77% of predetermination review applications were approved, with rejections primarily resulting from invalid EIN numbers or ineligibility to file the application. The 18% discrepancy in approval rates between the predetermination review applications and all EZ applications suggests that applicants not selected for predetermination review may not, in reality, all be eligible for federal tax exemption. In anticipation of this problem, the IRS has stated that it will conduct retrospective audits on EZ-filing tax-exempt organizations.

The IRS admits that the first year of Form 1023-EZ implementation has been a learning year and that adjustments to the Form 1023-EZ process are ongoing. For example, to reduce the number of applications rejected, the IRS has begun researching incorrect EIN numbers rather than automatically rejecting applications and also following-up by phone when applicants fail to respond to the IRS's written requests for additional information.

The IRS acknowledges that the simplified application comes with some inherent risks, including insufficient information to make an accurate determination and increased likelihood of fraud. To address these issues, the IRS has implemented new procedures, including providing educational materials to potential applicants and using predetermination reviews to screen applications. In the coming year, the IRS plans to further reduce risk and refine the Form 1023-EZ process by implementing a post-determination compliance program for Form 1023-EZ filers that have been operating for at least one year. It will also implement changes to Form 1023-EZ and its instructions to clarify what information is being requested, require additional attestations, and secure additional contact information for follow-up.

It is important to understand that Form 1023-EZ does not loosen the requirements for becoming a tax-exempt organization; rather, it simply streamlines the application process. Whether filing with Form 1023-EZ or traditional Form 1023, it is critical that organizations seeking tax-exempt status understand the organizational and operational requirements that come with 501(c)(3) status.

For more information on this topic, please contact:

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What Questions Should a Not-for-Profit Ask When Hiring a General Contractor or a Construction Manager?

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3. If you are hired as our GC/CM, how will you apply the energy and resources needed to plan and complete the project as required?

It is critical that the GC/CM dedicate the necessary project oversight and direct management resources so that the project does not trudge through either the pre-construction or construction process. Too often, not-for-profit projects get less than the needed attention from a GC/CM for any number of reasons, including perception that the project is less critical, is less of a money maker or comes with less threat of owner backlash. The reality is that through proper communication, vetting and expectation setting with qualified GC/CM organizations, the project can be planned, constructed and completed in a manner that meets the stakeholders' expectations.

4. How does your pre-construction approach accommodate flexibility and multiuser input, knowing that you will be working with numerous stakeholders and that our fundraising is not complete?

Working within tight time frames and tight budgets often becomes even more challenging when working with fundraising groups, expected, yet unknown, donor requests, management groups, outside groups, building committees and board members within a not-for-profit organization. A GC/CM that has experience working with other not-for-profits will know that your process requires a thoughtful project leader who will allow for lots of input while simultaneously driving progress. The GC/CM must recognize that the pre-construction process may be clouded with too much input, not enough input or conflicting input and that its role is to help focus the groups and their energy toward clarity of direction while providing clear information and answers so timely decisions can be made.

The GC/CM will also emphasize that the not-for-profit has a responsibility for timely decision making in order to ultimately secure project success.

5. How will you manage outside donated construction materials and/or labor?

A challenging issue for GC/CM companies is how to manage goodwill items that can be offered from stakeholders, volunteers and well-wishers to assist with the construction of a new facility. This may come in the form of donated building materials, labor or even help connecting the not-for-profit with businesses that could offer assistance. This takes focused effort and energy to determine if what is offered is applicable, usable or desirable; however, it can provide surprisingly positive and impactful results to the bottom line.

6. Do you have relationships with vendors/suppliers that could help our project save time or money?

There are times when a GC/CM may have trusted or valued relationships with subcontractors or suppliers that could provide benefit for the project. The trust between these companies is often driven from the aligned values they share and, if this is in fact the case, it provides an opportunity for the subcontractor or supplier to stand behind a cause that fits with its own organization. This support could come in several ways: design or engineering contributions, material or labor donations, or simply direct involvement with the day-to-day support of the not-for-profit.

For more information on this topic, please contact:

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Benesch's Not-for-Profit Team assists not-for-profit and tax-exempt clients in a broad array of matters, ranging from filing for nonprofit status and preparing federal and state tax exemption applications to training in not-for-profit regulatory compliance. Our not-for-profit attorneys are committed to protecting our clients' assets so that they can continue to drive the missions and goals of their organizations.

For more information regarding this edition or any not-for-profit issues, please contact:

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Ohio Legislation to Update Child Abuse and Neglect Laws Introduced



Rachel Winder

Ohio House Bill 493 Would Modernize and Clarify Medical Professionals' Responsibilities

According to the sponsors of HB 493, Rep. Barbara Sears (R-Sylvania) and Rep.

Scott Ryan (R-Newark), current child abuse and neglect law can sometimes create barriers to thorough examinations of children who may be abused or neglected. This bill proposes to modernize and clarify the law governing medical professionals' responsibilities for conducting exams and reporting suspected child abuse and neglect. Specifically, the bill would:

- Update language to permit medical exams, tests and procedures that are within the standard of care in order to encourage thorough exams and permit current (and future) best standard of care practices.
- Clarify that the standard of care medical examinations, tests and procedures are for purposes of diagnosis, treatment and safe discharge of a child whose injuries may result from abuse or neglect.
- Clarify that anyone who participates in medical examinations, tests or procedures related to diagnosis or treatment of suspected child abuse or neglect in a patient, including siblings or other children who reside in the home, or who provides any information used in a child abuse or neglect report is immune from civil or criminal liability resulting from the report or related medical care.
- Authorize medical examinations, tests and procedures for siblings and other children who live in the same home as a child who may have been abused or neglected.
- Authorize a hospital, children's advocacy center or other emergency medical facility to take steps reasonably necessary for the safe discharge of a child as part of the medical care it provides to a child who may have been abused or neglected.
- Clarify that medical examinations, tests or procedures conducted for the purpose of diagnosing or treating a child who may have been abused or neglected, including medical examinations, tests or procedures of a child's siblings and other children who reside in the home, are not law enforcement actions.
- Recognize and permit the use of a "care team" to provide health care services to a child who has suffered abuse or neglect, and permit that team to designate one member to report suspected child abuse or neglect.
- Permit results and reports from medical examinations, tests and procedures to be included in a child abuse or neglect report.

The proposed legislation provides immunity for medical professionals acting in accordance with the law; expressly permits current (and future) medical technology to be used in the diagnosis and treatment; streamlines and clarifies information sharing and reporting responsibilities in a modern treatment environment; and recognizes the importance of sibling examinations and safe discharge planning as part of a medical evaluation. This language is fully supported by the Ohio Children's Hospital Association.

To view House Bill 493, click [here](#).

For more information on this topic, please contact [Rachel Winder](#), Benesch Governmental Relations Manager, at (614) 223-9316.

Healthier Buckeye Grant Pilot Program Request for Grant Applications

An opportunity for faith-based organizations and community not-for-profits to partner with healthier buckeye councils

DUE MAY 3, 2016, at 3:00 p.m. by mail or hand-delivery only. Q & A period closes on April 25 at 8:00 a.m.

Max Grant Amount: \$750,000

*More than one local council can submit a max grant application for \$1.5 million

Summary: Competitive opportunity for established local healthier buckeye councils (local councils) who partner with faith-based organizations, community not-for-profits, the business community, physical and behavioral health groups, or educating, governmental and other organizations to create more efficient processes and develop an organizational infrastructure that will assist low-income individuals and families.

- Local councils may submit up to THREE (3) applications, sealed separately and ranked in priority order; each proposal must have a technical application and a cost proposal.
 - Must have signed Memorandums of Understanding (MOUs) between the applicant and all collaborators.
 - Must identify a lead collaborator.
- Successful applicants will demonstrate capability of the following:
 - A. Alignment and coordination of public and private services that assist low-income individuals and families to achieve self-sufficiency.
 - B. Maintenance of continuous mentoring support and coordination of community-level participation for low-income individuals and families.
 - C. Use of matching local funds.
 - D. Use of volunteer and peer supports.
 - E. Managing or providing similar services with public or private funds.
 - F. Effectively evaluating program outcomes, including success at assisting individuals and families in achieving and maintaining financial self-sufficiency, and reporting relevant participation data.
 - G. Evidence of the ability to sustain the program long-term and offer continued assistance to individuals.
- H. Achievement of positive and improved livelihood for low-income individuals and families through detailed and measurable strategic and outreach plans.
- I. Collaboration between entities that participate in assessment and planning processes.
- Must include description of goals and outcomes, methodology for measuring progress, and benchmarks to be achieved along with methodology for analyzing and correcting program errors.

ODJFS will issue agreement award notification letters (estimated) by May 17, 2016.

Program start date is in 2016 after the Ohio Office of Budget and Management approves the purchase order.

Apply [here](#).

More information about healthier buckeye councils can be found [here](#).

Events

The Attorney General’s Office Monthly Webinars

The Attorney General’s Office provides webinar training to assist charitable leaders in understanding their responsibilities. Participants are able to ask or email questions during the sessions. A board governance webinar is held on the first Wednesday of each month. A webinar on the charitable registration system is held at noon on the third Wednesday of each month. Participants must have access to the Internet and either a telephone connection or an audio connection via computer.

Click below for more details and to register for the webinars.

[Board Governance Webinars](#)

[Charitable Registration Webinars](#)

Spring Conference & Partner Fair

Association of Fundraising Professionals—Indiana Chapter

Date: April 29, 2016

Time: 9:00 A.M. – 2:30 P.M.

Location: IUPUI Hine Hall Auditorium, 875 North Street, Indianapolis, Indiana 46202

Morning Session—“*Essential Elements of a Successful Major Gift Program*”

Presented by Tim Ardillo, CFRE, JGA

A key element for the long-term sustainability of any fundraising program is creating an ongoing and systematic program of major gift philanthropy. This session will focus on developing a process that creates a purposeful, organized and ongoing program for identifying and cultivating relationships with donors that leads to the successful solicitation of major gifts.

Keynote Speaker – John List, University of Chicago

Speaking on “Using Field Experiments in the Economics of Charity: A Glimpse of Moderate and High Capacity Donors” and “Using Behavioral Economics to Raise More Money and Provide Better Services.”

Click [here](#) to learn more and register.

2016 Ohio Nonprofit Conference & Excellence Awards

Ohio Association of Nonprofit Organizations (OANO)

Date: May 3, 2016

Time: 8:00 A.M. – 4:00 P.M.

Location: Columbus State Conference Center, 315 Cleveland Avenue, Columbus, Ohio 43215

Each year, OANO honors the passion and impact of organizations and leaders in the local not-for-profit sector through the Nonprofit Excellence Awards. Now, more than ever, local not-for-profit organizations are essential in our community and are pioneering new ways to serve, educate and broaden new horizons. Please join OANO to celebrate the outstanding achievements in the not-for-profit sector.

Click [here](#) to learn more and register.



Thursdays, May 5, 2016 | 8:00 A.M. to 1:15 P.M.
Cleveland Metropolitan Bar Association (CMBBA)
1375 E. 9th Street, One Cleveland Center Building, 2nd Floor | Cleveland, Ohio

8:00 – 8:25 A.M.	Registration and Continental Breakfast
8:35 – 9:25 A.M.	General Session—Recurring Issues in the Contemporary Workplace <i>Presented by Peter N. Kirsanov</i>
9:30 – 10:15 A.M.	Breakout Session 1
10:15 – 10:30 A.M.	Break
10:30 – 11:15 A.M.	Breakout Session 2
11:20 A.M. – 12:05 P.M.	Breakout Session 3
12:15 – 1:15 P.M.	Lunch with Q&A

Breakout Session Topics

- Responding to Employee Complaints** presented by *Maynard A. Buck*
- Update on Joint Employment** Presented by *Joseph N. Gross*
- FLSA White Collar Exemption** presented by *Rick Hepp*
- LGBT Issues in the Workplace** presented by *Christopher J. Lalak*
- Recent NLRA Developments** presented by *Steven Moss*
- Best Practices for Conducting 401(k) Committee Meetings** presented by *Shaylor Steele*
- Fair Credit Reporting Act and Background Checks** presented by *Katie Tesner*
- Workplace Violence Challenges** presented by *Robert A. Zimmerman*

RSVP before April 28 by contacting Megan Pajakowski at mpajakowski@beneschlaw.com

There is no charge for this conference.

Approved for 3.0 Ohio CLE Hours.
Pending 3.0 SHRM Credit.