Record-Keeping Requirements
Acknowledgements

- This is one in a series of webinars dealing with the operation of small nonprofit organizations.
- It is being conducted in partnership with Weil Gotshal and Manges and the following organizations:
Board Should Adopt a Record Retention Policy

- IRS provisions
  - Records must clearly show income and expenses.
  - Form 990, Part VI requires nonprofit to disclose if it:
    - Contemporaneously documents Board and committee meetings.
    - Maintains written document retention and destruction policy.
Maintain Records for Public Inspection

- Nonprofit must make certain forms available for inspection by public upon request. Forms that must be available for public inspection:
  - Form 1023 – Applications filed after July 14, 1987 must be made permanently available for public inspection.
  - Penalty of $20 per day if fail to comply.
  - Forms 990/990-EZ/990-N (except donor names and addresses from Schedule B) and, if applicable, 990-T.
    - Must be made available for 3 year period from the due date of the return or liquidation, dissolution, or termination.
    - 990-N available through IRS website.
Maintaining Records for Public Inspection

- Individual requests for copies of public documents:
  - *In-person at principal office*: must provide same day.
  - *In-person if nonprofit has no principal office*: provide at reasonable time and place within 2 weeks.
  - *By mail*: fulfill requests within 30 days.
  - *Charge to requester*: Nonprofit may charge reasonable copying costs and actual postage.

- Posting forms on nonprofit’s website or Guidestar
  - Satisfies requirement to provide copies on request but still must comply with in-person inspection requests.
  - Must inform requesters of where documents are online.
  - Guidestar does not post documents in time to meet all IRS requirements, so must add to Guidestar disclosure.
General Requirements for Retaining Common Records

- **Legal Requirements**
  - Records in connection with litigation or potential legal action must be kept until settlement or the time to file/appeal expires.
  
- **Federal tax requirement**
  - Keep books and records on tax year basis.
  - Keep financial records supporting information on tax return until statute of limitations ends.
    - Usually the later of the date the return is due or filed plus six years.
  - Keep Form 990s for at least seven years – IRS may audit returns for three years, or if a material understatement of revenue, for six years. Best practice to keep permanently.
## Common Record Retention Requirements

- **State and local requirements**
  - May need to keep records longer—check your state law.
  - In states with a long statute of limitations for breach of charitable trust actions, such as California (10 years), some records may need to be kept longer than the recommended best practices.
  - If a membership organization, may have to maintain records and make them available to members for inspection. Board members have a right to inspect records.
  - Charitable solicitation laws in some states require nonprofit to make financial information available upon request.

- **Federal employment laws**
  - Should be kept at least until statute of limitations expires.
Common Record Retention Requirements

- Best Practices
  - General rules
    - Records should be kept permanently if have enduring value:
      - Application for tax-exempt status.
      - IRS determination letter.
      - Organizational documents (articles, bylaws) with amendments.
      - Board and committee minutes, policies, resolutions.
      - Copyright, trademark, patent registrations.
      - Form 990 tax returns.
      - Financial statements.
      - Certain state and local filings.
      - Insurance policies (auto, general liability & umbrella policies usually cover any claim incurred as a result of action that took place during policy period, even if claim filed years later.)
Common Record Retention Requirements

- Records with limited value should be kept for 3 years unless required to be kept longer by law.
- Records with little or no long-term value should be kept until no longer than needed for reference.
- Records for donor’s tax reporting
  - Keep copy of acknowledgment of donation and IRS Forms 5253 or 5252 for six years.
- Minute books:
  - Prepare contemporaneously with meeting. Keep permanently.
  - “Contemporaneous” for IRS purposes:
    - Prepare before next meeting or within 60 days, whichever is later.
## Common Record Retention Requirements

- **Minutes should include:**
  - Name of organization, date, time and place of meeting, who called meeting, who prepared minutes and members present/absent.
  - All motions made and results of voting. Directors may request that minutes state specifically that they voted no on a motion. It will help shield director from liability if appropriateness of action questioned.
  - Specific discussion and actions relating to the following:
    - Conflict of interest policy, whistleblower and record retention policy/Related party transactions.
    - Executive compensation.
    - Financial audits.
    - Disposition of a large portion of the organization’s assets.
    - Changes to governing documents.
    - Participation in joint venture arrangements.
## Common Record Retention Requirements

- **State or local filings**
  - State tax exemption filings: permanent.
  - Annual or biennial reports (to secretary of state and/or attorney general): permanent.
  - Basic business license: if license required, keep permanently.
  - Charitable solicitation registrations: if registration required, keep initial registration permanently; annual renewals for 10 years.
Common Record Retention Requirements

- Contracts: contract term plus seven years.
- Financial audits: permanent.
- Bank records: 7 years
- Employment records
  - Employment applications: 3 years
  - Personnel or employee files: 7 years following termination
  - Payroll records: 7 years
## Common Record Retention Policy

- **Employee insurance records – HIPAA compliance**
  - Maintain separate from personnel files and kept secure.
  - Employee health information only disclosed on a need-to-know basis.

- **Correspondence**
  - Hard-copies and internal memorandums
    - Routine matters: 2 years.
    - Important/legal matters: permanent, subject to review.
  - Emails
    - Important/legal matters: permanent, subject to review.
    - Print and keep with hard-copies and internal memoranda
    - Other emails – keep as long as necessary based on content of email. (I.e., employment matter would be kept as long as other employment records.)