B35220

STATE OF INDIANA

AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
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November 30, 2009

Board of Directors
Archer Consultation Services, Inc.
P.O. Box 947
North Vernon, IN 47265

We have reviewed the audit report prepared by Blue & Co., LLC, Independent Public Accountants, for the period July 1, 2007 to June 30, 2008. In our opinion, the audit report was prepared in accordance with the guidelines established by the State Board of Accounts. Per the Independent Public Accountants' opinion, the financial statements included in the report present fairly the financial condition of the Archer Consultation Services, Inc., as of June 30, 2008, and the results of its operations for the period then ended, on the basis of accounting described in the report.

The Independent Public Accountants' report is filed with this letter in our office as a matter of public record.

We call your attention to the findings in the report. The management letter contains four comments.

STATE BOARD OF ACCOUNTS

ARCHER CONSULTATION SERVICES, INC.

TABLE OF CONTENTS
JUNE 30, 2008

CPAS ADVISORS

blue

Blue & Co., LLC / 106 Community Drive / Seymour, IN 47274
main 812.522.8416 fax 812.523.8615 email blue@blueandco.com

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors
Archer Consultation Services, Inc.
North Vernon, Indiana

We have audited the accompanying statement of financial position of Archer Consultation Services, Inc. as of June 30, 2008, and the related statements of activities and cash flows for the year then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Archer Consultation Services, Inc. as of June 30, 2008, and the changes in its net assets and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Our audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information on page 11 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Blue & Co., LLC

January 5, 2009

ARCHER CONSULTATION SERVICES, INC.

STATEMENT OF FINANCIAL POSITION
JUNE 30, 2008

ASSETS

Assets	
Cash	$ 1,163,515
Resident living receivable	11,168
Client receivables, net	17,211
Medicaid Waiver services receivable- Residential Habilitation Services	85,105
Medicaid Waiver services receivable- Adult Foster Care	87,384
Prepaid expenses	33,684
Property and equipment	882,530
Other assets	725
Restricted cash	105,767
	$ 2,387,089

LIABILITIES AND NET ASSETS

Liabilities	
Accounts payable	$ 63
Client liabilities	105,767
Accrued living expenses	104,191
Accrued wages and paid time off	421,989
Other accrued expenses	64,324
Term debt	319,553
Total liabilities	1,015,887
Unrestricted net assets	1,371,202
	$ 2,387,089

See accompanying notes to financial statements.

ARCHER CONSULTATION SERVICES, INC.

STATEMENT OF ACTIVITIES
YEAR ENDED JUNE 30, 2008

Support and revenues	
Client benefit income	$ 685,613
Medicaid waiver service income	4,823,820
Adult foster care supervision income	1,913,549
Transportation income	88,201
Interest income	13,485
Miscellaneous income	7
Total support and revenues	7,524,675
Expenses	
Program services	5,373,273
Management and general	1,890,280
Total expenses	7,263,553
Change in net assets	$ 261,122
Net assets, beginning of year	
As previously reported	$ 1,152,249
Prior-period adjustments:	
Correction of recognition of client accounts	89,887
Correction of depreciation method	24,529
Correction of recognition of accrued paid time off	(156,585)
As restated	1,110,080
Change in net assets	261,122
Net assets, end of year	$ 1,371,202

See accompanying notes to financial statements.

ARCHER CONSULTATION SERVICES, INC.

STATEMENT OF CASH FLOWS
YEAR ENDED JUNE 30, 2008

Operating activities	
Change in net assets	$ 261,122
Adjustments to reconcile change in net assets to net cash flows from operating activities:	
Depreciation	252,692
Bad debt	25,000
Loss on disposition of assets	1,767
Changes in operating assets and liabilities:	
Resident living receivable	(2,085)
Client receivables	(23,344)
Medicaid Waiver services receivable	(27,040)
Prepaid expenses	44,672
Other assets	8,860
Restricted cash	46,345
Accounts payable	63
Client liabilities	(46,345)
Accrued living expenses	(3,053)
Accrued wages and paid time off	106,926
Other accrued expenses	41,733
Net cash flows from operating activities	687,313
Investing activities	
Purchase of property and equipment	(199,138)
Proceeds from the disposition of assets	1,651
Net cash flows from investing activities	(197,487)
Financing activities	
Borrowings under term debt	90,000
Principal payments of debt	(74,196)
Net cash flows from financing activities	15,804
Net change in cash	505,630
Cash, beginning of year	657,885
Cash, end of year	$ 1,163,515
Supplemental disclosure of cash flow information	
Cash paid during the year for interest	$ 18,850

See accompanying notes to financial statements.

1. NATURE OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

Archer Consultation Services, Inc. (the "Organization") was incorporated on August 26, 1986 as an Indiana Not-for-Profit Corporation. The Organization is organized exclusively for charitable and educational purposes. It manages and operates an alternative family program for residents and former residents of State facilities and individuals referred through the Division of Disability, Aging, and Rehabilitative Services, State of Indiana. In addition, the Organization manages a supported living and Medicaid Waiver Services program for qualifying individuals. The area served by the Organization is generally the State of Indiana. Future client funding with the State of Indiana is determined on an annual basis. The State has indicated they will continue client funding through the upcoming fiscal year.

Management's Estimates

Preparation of the financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the reported support, revenues and expenses. Actual results could vary from the estimates that were used.

Basis of Presentation

Net assets, support, revenues, expenses, gains and losses are classified based on the existence or absence of donor-imposed restrictions. Support that is restricted by the donor is reported as an increase in unrestricted net assets if the restriction expires in the reporting period in which the support is recognized. The net assets of the Organization are classified and reported as unrestricted net assets as they are not subject to donor-imposed restrictions.

Accounts Receivable

The Organization's resident living receivable and Medicaid Waiver services receivable consists of amounts billed to government agencies for services rendered or reimbursement of client living expenses. Client receivables consist of client expenses paid by the Organization for supported living clients in excess of funds received on behalf of these clients. The Organization may be reimbursed by future excess client receipts. Management assesses the collectability of the receivables on a regular basis and adjusts the receivables to net realizable value accordingly. As of June 30, 2008, the allowance for uncollectible balances related to the client receivables is $165,000. No allowance is considered necessary for the other receivable amounts.

Property and Equipment

Property and equipment are recorded at cost and include expenditures which substantially increase the useful lives of existing assets. Costs of ordinary maintenance and repairs are expensed as incurred. The Organization provides for depreciation of property and equipment using the straight-line method over their estimated useful lives as follows:

Description	Useful Lives
Buildings and building improvements	5 - 25 years
Vehicles	3 - 5 years
Office equipment	3 - 10 years

Government Funding

The Organization relies on government funding to carry out its programs. The Indiana Division of Disability, Aging, and Rehabilitative Services (the "Division") pays a monthly rate per client for these supervision services and living allowances. In addition, the Organization receives cash on behalf of the client from the Division, the Social Security Administration, Medicaid, and families of the client for a resident living allowance. The Organization then makes payments to householders and others on behalf of the client. The Division reserves the right to reduce funding to the Organization if its funding sources are reduced. In addition, the Organization is a qualified and certified provider of supported living services through Medicaid, based on units of service reimbursements.

Restricted Cash

Restricted cash consist of monies received for the benefit of supported living clients which are held in client liabilities at June 30, 2008.

Revenue Recognition

Revenue is recognized in the period that services are provided to the client or when earned otherwise.

Income Taxes

The Internal Revenue Service has ruled that the Organization qualifies under Section 501(c)(3) of the Internal Revenue Code and is, therefore, not subject to income taxation under present income tax laws.

Functional Allocation of Expenses

The costs of providing the various programs and supporting services have been summarized on a functional basis is the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

2. PRIOR PERIOD ADJUSTMENTS

Net assets at the beginning of 2008 has been adjusted to correct opening balances. This correction resulted in a $42,169 decrease to previously reported net assets. The prior period adjustment consists of the following:

Adjustment to properly reflect client liabilities and related cash account as well as allowance for uncollectible client receivables	$ 89,887
Adjustment to properly reflect accumulated depreciation	24,529
Adjustment to accrue paid time off	(156,585)
	$ (42,169)

3. PROPERTY AND EQUIPMENT

A summary of property and equipment as of June 30, 2008 is as follows:

Land	$ 55,000
Buildings and building improvements	477,034
Vehicles	600,948
Office equipment	320,750
	1,453,732
Less accumulated depreciation	(571,202)
	$ 882,530

4. CLIENT LIABILITIES

Amounts received for resident living allowances from the Division of Disability, Aging, and Rehabilitative Services and Social Security for supported living clients are used to pay direct client expenses. Therefore, amounts received and expenses paid under this program are recognized as a change in client liabilities in the period that such funds are received and expenses are paid. Following is a progression of client liabilities during the year:

Client liabilities, beginning balance as restated	$ 152,112
Funds received	316,594
Expenses paid	(362,939)
Client liabilities, ending balance	$ 105,767

5. TERM DEBT

Term debt consists of the following at June 30, 2008:

Installment note payable to bank; interest at 7.42%; payable in monthly installments of $5,263, including interest through October 2011; subject to prepayment penalty; secured by vehicles.	$ 190,134
Installment note payable to bank; interest at 5.89%; payable in monthly installments of $644, including interest through March 2013; secured by building.	89,421
Promissory note payable to an individual; non-interest bearing; payable in monthly installments of $2,200 with a final payment of $3,000 on December 15, 2009	39,998
	$ 319,553

Term debt maturities are as follows:

Year Ending June 30,	
2009	$ 79,697
2010	70,947
2011	61,708
2012	28,858
2013	78,343
	$ 319,553

6. HIGH DEDUCTIBLE INSURANCE PLAN

As of December 17, 2007, the Organization's workers compensation insurance is covered through a high-deductible plan. The Organization is liable for the first $50,000 of claims per incident under the plan at June 30, 2008. The Organization carries stop-loss insurance in order to limit its liability. The Organization's aggregate stop-loss limit under the plan is $150,000 at June 30, 2008. Workers compensation insurance expense for the year ended June 30, 2008 was $162,842 of which $74,762 was incurred under the new plan.

At June 30, 2008, the Organization had not yet settled several claims made under the plan. The Organization has accrued $51,606 related to these unsettled claims as of June 30, 2008. It is at least reasonably possible that the Organization's estimate of this liability will change in the near term, and such change could be material.

In conjunction with the Organization's high-deductible insurance plan, the Organization's bank has issued a letter of credit totaling $150,000 in favor of the insurance company that expires on December 10, 2008. There were no amounts outstanding under this letter of credit at June 30, 2008.

7. OPERATING LEASES

The Organization leases office space under operating leases from various unrelated parties. These leases require monthly payments in varying amounts through March 2010.

The schedule of future minimum lease payments under these leases is as follows:

Year Ending June 30,	Amount
2009	$ 8,700
2010	2,175
	$ 10,875

Total rent expense under these agreements for the year ended June 30, 2008 was $32,100 of which $17,100 is included in supported living program expense.

8. RETIREMENT PLAN

The Organization maintains a 401(k) defined contribution retirement plan for the benefit of substantially all of its employees. The Organization made non-discriminatory matching contributions on behalf of all participants who make salary deferral contributions to the plan during the plan year, pursuant to a resolution adopted by the Organization. The Organization may make discretionary contributions to the plan as determined at the Organization's discretion. The Organization made matching contributions of $30,845 during the year ended June 30, 2008.

9. CONCENTRATIONS

The Organization maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits. The Organization has not experienced any losses in such accounts. The Organization believes it is not exposed to any significant credit risk on cash.

The Organization is substantially funded by Medicaid reimbursement and contracts awarded directly and indirectly by the federal government and the State of Indiana. The agreements contain provisions that permit the arrangements to be terminated or the funds provided to be reduced if the unit of government does not appropriate adequate funds to maintain its current funding levels. The Organization provides care to clients under reimbursement agreements with Medicaid. These agreements provide for payment for covered services at prospectively determined rates that are different from established rates. Provision has been made in the financial statements for the estimated contractual adjustments, representing the difference between charges for services and estimated reimbursable cost.

SUPPLEMENTARY INFORMATION

ARCHER CONSULTATION SERVICES, INC.

SCHEDULE OF FUNCTIONAL EXPENSES
YEAR ENDED JUNE 30, 2008

	Program Services	Management and General	Total
Resident living expenses	$ 24,993	$ -0-	$ 24,993
Adult Foster Care expenses	1,290,379	-0-	1,290,379
Supported living program expenses	260,495	-0-	260,495
Transportation	70,961	-0-	70,961
Salaries	3,025,816	1,116,421	4,142,237
Payroll taxes	291,866	82,741	374,607
Employee health insurance	78,163	33,498	111,661
Training	20,374	-0-	20,374
Advertising	-0-	746	746
Depreciation	189,519	63,173	252,692
Processing fees	-0-	19,250	19,250
Insurance	95,806	318,153	413,959
Loss on disposition of assets	1,767	-0-	1,767
Office supplies	-0-	37,571	37,571
Retirement plan	23,134	7,711	30,845
Postage	-0-	9,561	9,561
Professional fees	-0-	30,587	30,587
Rent	-0-	15,000	15,000
Repairs	-0-	41,026	41,026
Utilities	-0-	16,052	16,052
Telephone	-0-	21,092	21,092
Interest expense	-0-	18,850	18,850
Bad debt	-0-	25,000	25,000
Donations	-0-	25	25
Miscellaneous	-0-	33,823	33,823
Total	$ 5,373,273	$ 1,890,280	$ 7,263,553

CPAs / ADVISORS

blue

Blue & Co., LLC / 106 Community Drive / Seymour, IN 47274
main 812.522.8416 fax 812.523.8615 email blue@blueandco.com

January 5, 2009

Board of Directors
Archer Consultation Services, Inc.
North Vernon, Indiana

Dear Members of the Board:

We have audited the financial statements of Archer Consultation Services, Inc. (the "Organization") for the year ended June 30, 2008, and have issued our report thereon dated as of the date of this letter.

Professional standards require that we provide you with the following information related to our audit.

OUR RESPONSIBILITY UNDER U.S. GENERALLY ACCEPTED AUDITING STANDARDS

As stated in our engagement letter, our responsibility, as described by professional standards, is to express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free of material misstatement. As part of our audit, we considered the internal control of the Organization. Such considerations were solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

QUALITATIVE ASPECTS OF ACCOUNTING PRACTICES

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by the Organization are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year. We noted no transactions entered into by Organization during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements prepared by management and are based upon management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

The most sensitive estimates affecting the financial statements were the depreciation of property and equipment over their useful lives, the functional allocation of expenses, the collectability of client receivables, and the recognition of accrued self-funded insurance costs.

The disclosures in the financial statements are neutral, consistent, and clear.

DIFFICULTIES ENCOUNTERED IN PERFORMING THE AUDIT

We encountered no significant difficulties in dealing with management in performing and completing our audit

CORRECTED AND UNCORRECTED MISSTATEMENTS

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements.

The following material misstatements detected as a result of audit procedures were corrected by management:

- An adjustment to properly record prior years' client liabilities, related cash account and allowance for uncollectible client receivables. This adjustment increased net assets as of the beginning of the year by $89,887.
- An adjustment to properly record prior years' accumulated depreciation. This adjustment increased net assets as of the beginning of the year by $24,529.
- An adjustment to properly record prior years' accrued vacation. This adjustment decreased net assets as of the beginning of the year by $156,585.
- An adjustment to properly reflect fixed assets at June 30, 2008. This adjustment increased the change in net assets by $16,808.
- An adjustment to properly reflect client liabilities at June 30, 2008. This adjustment had no effect on the change in net assets.
- An adjustment to properly reflect accrued wages and FICA at June 30, 2008. This adjustment decreased the change in net assets by $92,452.
- An adjustment to properly reflect accrued vacation at June 30, 2008. This adjustment decreased the change in net assets by $28,020.

In addition, there were other misstatements detected as a result of audit procedures and corrected by management which were immaterial, either individually or in the aggregate, to the financial statements taken as a whole.

The only uncorrected misstatement of the financial statements is related to the recording of accrued worker's compensation, which would have decreased the change in net assets by $20,434. Management has determined that its effects are immaterial to the financial statements taken as a whole.

DISAGREEMENTS WITH MANAGEMENT

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of the audit.

MANAGEMENT REPRESENTATIONS

We have requested certain representations from management that are included in the management representation letter dated as of the date of this letter.

OTHER AUDIT FINDINGS OR ISSUES

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Organization's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

INTERNAL CONTROL MATTERS

In planning and performing our audit of the financial statements of the Organization as of and for the year ended June 30, 2008, in accordance with auditing standards generally accepted in the United States of America, we considered the Organization's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. Accordingly, we do not express an opinion on the effectiveness of the Organization's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control. We consider the following deficiencies to be significant deficiencies in internal control:

Identification of material misstatements from US GAAP during the audit

During the audit, we noted certain adjustments which we proposed to the Organization for posting which the Organization reviewed and agreed were necessary to post in order for the financial statements to be in accordance with US GAAP. Accrued vacation and client receivables had not been recognized and other accounts contained material variances. We recommend that the Organization track and post accrued vacation and adjust accrued wages at year-end to the proper amount. We also recommend that the Organization track client liabilities to ensure unsupported amounts are written off, client receivables are recognized as necessary and an allowance is posted to reflect the client receivable amounts considered uncollectible.

OUR RECOMMENDATIONS FOR YOUR ORGANIZATION

During the course of an audit, we frequently become aware of matters which are opportunities to strengthen internal controls or improve operating efficiency or effectiveness.

CURRENT YEAR RECOMMENDATION

During the course of our 2008 audit, we have developed the following recommendations for your consideration.

Segregation of duties related to cash disbursements

Primarily because of limited administrative personnel, the Organization has a lack of segregation of duties in certain areas. During our current year interim audit procedures, we noted that the Organization has one person receive invoices, approve payments, record payments in the system and sign the checks. We verbally recommended during our interim fieldwork that an individual who is not an authorized check signor should enter the invoices in the accounting system and process checks for proper segregation of duties. Since our initial discovery, management has implemented a process whereby the assistant business manager enters invoices and processes checks while the business manager reviews and signs checks.

Segregation of duties in preparation and deposit of bank deposits

During our current year interim audit procedures, we noted that the Organization has one person who may prepare bank deposits, record those deposits in the accounting system and make the deposits at the bank. These processes should not be performed by the same person, if possible. We verbally recommended during our interim fieldwork that the assistant business manager create a listing of checks received prior to giving them to the business manager for deposit. Since our initial discovery, management has implemented this process as recommended.

Adult Foster Care receipts

During our current year audit, we noted the Organization deposits adult foster care (AFC) receipts into the administrative cash account and then transfers these funds to the client cash account. All expenses for the AFC clients are paid from the client cash account. The remaining unused portion is then transferred back to the administrative cash account at the end of every month. We recommend that the Organization deposit the AFC client cash receipts directly into the administrative account and pay client expenses from this account in order to eliminate the need to track all receipts and expenses and make monthly transfers between the cash accounts.

Board structure

During our current year audit, we noted the Organization is structured to have a board of directors consisting of three to nine members, with a maximum of three employees. To maintain proper oversight of the Organization and gain more community involvement, we recommend amending the by-laws to require at least a portion of the Board to be non-employees.

CURRENT ISSUES AFFECTING NOT-FOR-PROFIT ORGANIZATIONS

Governance and Policy Decisions Emphasized in the New Form 990

On December 20, 2007, the IRS released the 2008 Form 990, *Return of Organization Exempt from Income Tax*, the informational form filed by public charities and other tax-exempt organizations. Organizations will begin using the new Form 990 for tax years beginning in 2008 (returns filed in 2009).

Areas of added emphasis include questions related to governance, management, and financial reporting. Examples of some new questions that will have to be answered on the 2008 Form 990 include:

- Does the Organization have a written conflict of interest policy? If so, are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts? Does the organization regularly and consistently monitor and enforce compliance with the policy? If yes, describe how this is done.
- Does the Organization have a written whistleblower policy?
- Does the Organization have a written document retention and destruction policy?
- For the CEO, Executive Director, other officers or key employees, did the process for determining compensation include a review and approval by independent

persons, comparability data, and contemporaneous substantiation of the deliberation and decision?

- Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?
- Did the Organization contemporaneously document the meetings held or written actions undertaken during the year by the governing body and by each committee with authority to act on behalf of the governing body?
- Does the Organization have a gift acceptance policy that requires the review of any non-standard contributions?
- Was a copy of the Form 990 provided to the Organization's governing body before it was filed? All organizations must describe the process, if any, the Organization uses to review the Form 990.
- Were the Organization's financial statements compiled, reviewed, or audited by an independent accountant? If so, does the Organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?
- The Organization must identify how it makes its Form 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection.
- The Organization must describe whether (and if so, how) it makes its governing documents, conflict of interest policy, and financial statements available to the public.

We suggest that organizations review their existing policies and procedures in light of the questions that must be answered on the new Form 990, and determine what changes, if any, should be made prior to the end of the fiscal year that began in 2008.

Definition of Key Employee Expanded for IRS Reporting Purposes

Along with redesigning the Form 990, Return of Organization Exempt from Income Tax, the IRS is redesigning the definition of the term "key employee" for purposes of compensation reporting therein. The IRS decided to change the definition of a "key employee" to increase tax compliance with respect to 501(c)(3) and (c)(4) organizations subject to the excess benefit transaction rules of Section 4958. However, the new definition will apply to all filing organizations, not just those listed above.

The hesitation in identifying someone as a "key employee" is that for those individuals identified, all compensation paid or awarded to them must be disclosed on the Form 990 (and such compensation must be reported on a calendar year basis).

On prior Form 990 instructions, a key employee was described only as someone who had the responsibilities and authority of an officer but who wasn't designated as such. The new definition is much broader. It states that a key employee is an employee of the organization (other than an officer, director, or trustee) who:

1. receives reportable compensation from the organization and all related organizations in excess of $150,000 for the calendar year ending with or within the organization's tax year;
2. (a) has the responsibilities, power or influence over the organization as a whole that is similar to those of officers, directors, or trustees; (b) manages a discrete segment of activity of the organization that represents 10% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or (c) has or shares authority to control or determine 10% or more of the organization's capital expenditures, operating budget, or compensation for employees.
3. is one of the 20 employees (that satisfy the $150,000 test and the responsibility test above) with the highest reportable compensation from the organization and related organizations for the calendar year ending with or within the organization's tax year.

In preparation for the filing of the new form 990 for your organization for your fiscal year that begins in 2008, we suggest that you review the above definition of a key employee and determine who fits the definition. For those who meet the definition above, we suggest that you begin having discussions with them as early as possible so that they are prepared for their compensation information to be disclosed on the organization's annual Form 990 filing.

Final Regulations Released on Excess Benefit Transactions

The Internal Revenue Service released the final regulations on excess benefit transactions on March 27, 2008. An excess benefit transaction is a transaction in which a not-for-profit organization is deemed to have overcompensated CEO's, board members and other "disqualified" persons. The final regulations under Section 4958 make it clear that tax-exempt organizations involved in excess benefit transactions with disqualified persons should not wait for the IRS to get involved to take corrective action. Also emphasized was the need for exempt organizations to implement preventative safeguards. Safeguards mentioned include implementing a corporate compliance plan as well as making sure that the rebuttable presumption of reasonableness is satisfied whenever possible.

Being aware of the situation and not taking action to correct any excess benefit transactions could lead to excise taxes and/or revocation of an organization's exempt status. Factors identified as those that the IRS considers when deciding whether to assert excise taxes or the revocation of exempt status include:

- the size and scope of the organization's regular and ongoing activities that advance the exempt purposes both before and after the excess benefit transaction took place
- the size and scope of the excess benefit transaction compared to the size and scope of the regular and ongoing activities that further the organization's exempt purpose
- whether the organization has been involved in multiple excess benefit transactions with one or more persons
- whether the organization has implemented safeguards to prevent future excess benefit transactions
- whether the organization has corrected the problem or tried to recover money from the disqualified persons who benefited from the transaction

There are several examples actually detailed out in the final regulations. The examples are designed to help exempt organization leaders understand and apply the new regulations to their organizations and their specific situations. It is evident from reading the final regulations regarding excess benefit transactions that the IRS expects an organization's board to not only be aware of the risk involving excess benefit transactions, but to take preventative safeguarding measures to ensure against the risk.

This communication is intended solely for the information and use of management, the Board of Directors and its relevant committees (including as applicable the Audit and Finance Committee), and others within the Organization, and is not intended to be and should not be used by anyone other than these specified parties.

We appreciate this opportunity to be of service and extend our thanks to everyone at the Organization for their cooperation and assistance. We would be pleased to discuss any of the above matters with you at your convenience.

Very truly yours,

Blue & Co., LLC