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# Foundation

## NEWS & COMMENTARY

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## Hands On

### Keep, File, Toss?

by Jane C. Nober



**There's just not enough space to store everything. Here's how to choose what to toss, and what to save in order to stay in compliance with the IRS.**

Foundation recordkeeping is an inherently dull topic—unless it's done wrong. Foundation managers who have not kept adequate documentation regarding expenditure responsibility grants will surely find an IRS audit more exciting than they might like. Similarly, foundation managers confronted with a trustee succession battle will find the situation even more nerve-racking if they cannot put their hands on copies of the minutes of the meeting held years ago at which the succession issue was addressed and resolved. The following are suggestions to help make those sometimes tough keep/toss decisions.

#### Keep These Forever

Organizational documents, including the foundation's certificate of incorporation or a copy of the deed of trust by which it was established, top the list of documents to be retained forever. Tax documents follow closely. Correspondence with the Internal Revenue Service, including the foundation's application for exemption and its determination letter should also be accessible at all times (some older foundations will not, of course, have copies of their applications for exemption; the IRS' rule on this subject is that any tax-exempt organization that filed its applications for exemption from income tax after July 15, 1987, or had a copy of its applications on hand as of that date must have a copy of the application and supporting papers available for public

inspection). Copies of more recent tax returns should always be accessible (older returns may be stored in a more remote location), as well as records from any IRS audit. Similarly, state documents regarding the foundation's tax status should also be carefully guarded.

The corporate giving program will have no incorporating documents but may have correspondence from the IRS that should always be kept. Copies of the related corporation's returns, or at least sections relating to charitable contributions, would be helpful to have at hand.

Records of contributions to a private foundation should be retained permanently, along with information about such contributions' basis for tax purposes. These records will be necessary to determine private foundation excise taxes and, in certain circumstances, the aggregate tax benefit received by the foundation over time (an issue that arises on occasion if the foundation transfers its assets to another private foundation). Documents relating to a gift of real property made to community foundations should also be kept permanently.

Legal correspondence should always be kept. Opinion letters of counsel and even less formal correspondence may provide future foundation administrators with valuable information about how transactions were structured and why particular courses of action were taken. Property records, insurance policies and records relating to pensions and other retirement plans are also candidates for permanent retention.

Signed originals of the foundation's board minutes, including copies of any resolutions adopted are essential to have available. Most board members will want to have on hand an up-to-date version of the foundation's by-laws, if any; the foundation manager will want to ensure that he or she has records showing changes that have been made in these rules over time.

The nonfoundation corporate giving program may have by-laws or other operational guidelines that should be archived. Documents relating to board succession and governance may be especially helpful to keep available permanently. Finally, annual reports and other published summaries of the foundation or corporate giving program's activities are also candidates for permanent space in the file drawer or on the bookshelf.

### **Keep for Some Years**

Documents relating to grants made should be kept for at least the period during which a foundation might be audited on tax returns reporting them—generally three years. Under certain circumstances the audit window is six years, so the truly cautious administrator may want to keep documents on hand for six or even seven years. (Note that returns may be examined and taxes assessed at any time if there has been a false return filed or a willful attempt to evade tax.)

For grants made to domestic public charities, the grant file need not be extensive but should provide evidence that the grantee was indeed a tax-exempt public charity. A copy of the grantee's determination letter is helpful, but a notation that someone checked the IRS' Cumulative List of Charitable Organizations (also known as Publication 78 or the Blue Book) and ascertained that the organization was a 501(c)(3) will also do. A

foundation need not secure or retain a receipt from a grantee to document that the money was received, although many careful recordkeepers do so.

Documents relating to a grant made to a noncharitable grantee, a foreign grantee or a nonpublic charity grantee for a charitable purpose should be more extensive. All written material relating to equivalency determinations and expenditure responsibility grants made by a private foundation should be in the grant file; grantmakers other than private foundations should collect and keep ample evidence to demonstrate that the grant was intended and used for charitable purposes, including any records of pre-grant investigations of the grantee, grant agreements and signed follow-up reports. There are special rules relating to the documents that must be retained in connection with private foundation grants to individuals for study or travel; see Reg. § 53.4945-4(c)(6).

Corporate foundations and giving programs that run matching gift programs should treat their payments under these arrangements as grants and keep documents relating to them, especially documents showing the tax-exempt status of the grantee.

Financial records, such as records of purchases of investment assets, need to be kept only until the assets are sold or otherwise disposed of and for the duration of the audit period for the tax return on which the transaction is reported. Records regarding foundation transactions, such as purchases of office equipment and the like, need not be kept beyond the time necessary for tax reporting and the audit period that follows. Similarly, contracts for services generally need not be retained forever.

Records of contributions to community foundations generally fall into this category as well. Documents relating to cash contributions must be kept until tax reporting is complete and the audit period has ended. Records relating to a gift of securities should be kept until the securities are sold, the transaction is reported on the community foundation's tax return and the audit period has expired.

Community foundations should also keep on hand records of their efforts to comply with the various disclosure rules in the Tax Code (regarding provision of goods and services to donors) until the expiration of the audit period relating to the gift or solicitation campaign. The community foundation should check with its counsel or state attorney general regarding whether and how long solicitation records must be kept for state purposes.

Personnel records constitute another body of documents that should be retained for some time but not permanently. The foundation's accountant or lawyer will be helpful in sorting through the various required retention periods for these forms. For example, records relating to wages and various federal employment taxes must generally be kept for four years.

Immigration and Naturalization Service (INS) Form I-9, which sets out an employee's eligibility to work in the United States, needs to be kept for three years after the date of the employee's hiring, or one year after the employee's termination, whichever is later. If the foundation has file space to keep these records longer than the required retention period, it may be useful to do so, but it is not required.

Although many foundations keep a log of all inquiries received, there is no legal requirement that the actual requests for guidelines and rejected grant proposals be retained. The argument for keeping some portion of rejected proposals, however, is that these files allow grantmakers to compare changes and revisions between old and new funding applications.

### **Paper or Plastic?**

Where records should be kept, and in what form, are decisions for the foundation to make in consultation with its counsel, accountants and information service providers. For most purposes, either photocopies or original documents are adequate. Some records are appropriate to keep on microfiche or computer disk. The grantmaker's available space and technology will also help determine its actions.

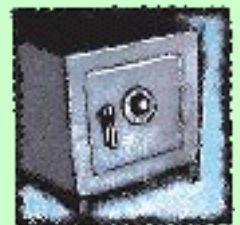
Some grantmakers worry that keeping too many documents will lead to problems. They fear that newspaper reporters may request copies of rejected grant applications or that the IRS may choose to look into transactions in years long passed if the records are available. These concerns should not prevent a grantmaker from retaining records.

There is no legal requirement that rejected applications be made public, and reporters may be told that the foundation has a policy of keeping rejected applications confidential in deference to the privacy concerns of the applicants. Although the IRS may request to see all documents it believes to be relevant to the assessment of tax, the foundation's counsel should help protect the foundation from an over-broad review.

As any office worker knows, paper has a tendency to accumulate. A written record retention policy can help grantmakers sort out the documents that need to be kept on hand from the ones that can go into the recycling bin. The retention policy itself is one to mark "save"—and to refer to often.

### **Keep These Forever Checklist**

1. Organizational documents
2. Certificate of incorporation/deed of trust
3. IRS information
4. Tax documents (recent returns—three years and less, audit records, state documents regarding tax status)
5. Foundation application for exemption/determination letter (required for all tax-exempts filing after July 1987)
6. Records of contributions to private foundations
7. Documentation for gifts of real property made to community foundations



- 8. Legal correspondence
- 9. Opinion letters of counsel

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