

SMALL NONPROFITS UNFAMILIAR WITH SARBANES-OXLEY FAILED TO ESTABLISH WHISTLEBLOWER PROTECTIONS

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ABSTRACT

The whistleblower protections under the Sarbanes-Oxley act apply to all organizations, however almost all small nonprofit organizations unfamiliar with this legislation do not have whistleblower protection policies for their employees. Compounding this issue are the 2008 tax year revisions to IRS form 990 that now require nonprofit organizations to document whether they have adopted document retention, whistleblower protection, and conflicts of interest governance controls. Targeting Pennsylvania nonprofit organizations, the research carried out in this study sought to discover what impact an organizations unfamiliarity with the Sarbanes-Oxley act had on their compliance with this federal legislation. The research findings indicated that almost two-thirds of small nonprofit organizations that were not familiar with the Sarbanes-Oxley act did not have whistleblower protections for their employees.

Keywords: Sarbanes-Oxley Act, IRS Form 990, Nonprofit Sector, Business

INTRODUCTION

Congress, concerned over the need for greater transparency and accountability across all sectors mandated the whistleblower and document retention regulations in the Sarbanes-Oxley act applicable to all organizations. Although this act applies primarily to publicly traded organizations, the whistleblower provision protects employees who report suspected violations of state and federal law from retaliation by their employer.

The whistleblower protection and document retention regulations [9, 12, 13, 24] were revised when the Sarbanes-Oxley Act of 2002 was signed into law. However, beginning in the 2009 tax year, a revised Form 990 designed to enhance the transparency and accountability of the nonprofit sector has been put in place by the IRS to further enhance the nonprofit sector's governance [23, 25]. Orlikoff & Totten [16] point out that underwriters and liability insurers now require nonprofit organizations to voluntarily provide these measures in their governance. Through this revised form, all nonprofit organizations must disclose whether they have whistleblower and document retention policies. Further disclosures are similar to the Sarbanes-Oxley act.

PROBLEM STATEMENT

The whistleblower protections under the Sarbanes-Oxley act apply to all organizations, but less than one percent of small nonprofit organizations that are unfamiliar with the Sarbanes-Oxley act are in compliance with this regulation.

PURPOSE OF STUDY

The purpose of this research study is to provide insight into how familiar Pennsylvania nonprofit organizations are with the Sarbanes-Oxley act, and to evaluate to what degree a nonprofit organization unfamiliar with the act is compliant with document retention, whistleblower protection, and conflicts of interest governance controls.

RESEARCH QUESTIONS

This empirical research targeted Pennsylvania nonprofit organizations, the research carried out in this study sought to discover what impact organizations unfamiliarity with the Sarbanes-Oxley act had on their compliance with this federal legislation. Specifically, this research study was conducted to examine the following research questions:

1. Are Pennsylvania nonprofit organizations familiar with the updated whistleblower provisions of the Sarbanes-Oxley Act?

2. Have small Pennsylvania nonprofit organizations that are unfamiliar with the Sarbanes-Oxley Act implemented whistleblower provisions?
3. Have Pennsylvania nonprofit organizations that are familiar with the whistleblower provisions of the Sarbanes-Oxley Act implemented whistleblower provisions?

PREVIOUS RESEARCH

This study is based on a study conducted by Iyer & Watkins, "Adoption of Sarbanes-Oxley Measures by Nonprofit Organizations: An Empirical Study" [13], which was conducted by surveying 600 South Carolina nonprofit organizations. The Iyer & Watkins survey instrument was employed in part to answer the above research question.

LIMITATIONS

This research study is limited in scope by the data collection instrument and the demographics of the study's sample population. As noted above, the data for this study were captured using an instrument that had been used in a previous research study by Iyer & Watkins (2008) [13], "Adoption of Sarbanes-Oxley Measures by Nonprofit Organizations: An Empirical Study", which addressed the adoption of Sarbanes-Oxley governance measures by nonprofit organizations. This instrument was adapted for the current research to address the adoption of Sarbanes-Oxley governance measures as a result of the revised IRS Form 990. Changes in the revised version were minor in scope and are explained in the methodology section of this research project. The sample for this project was derived using a simple random sampling technique. Although every effort was made to ensure a representative sample of Pennsylvania nonprofit organizations, this research study realized a 2:1 ratio of large vs. small organizations represented among those who replied. It should be noted that the DoS dataset did not contain information related to budget or number of employees. These limitations placed constraints on the generalizability of the collected data. Therefore, every effort has been made to ensure that the conclusions drawn are representative of the population.

REVIEW OF THE LITERATURE

Introduction

Revisions to IRS Form 990 have placed undue burdens on small nonprofit organizations. The mandates in the revised Form 990 address the lack of the nonprofit sector's accountability and transparency over the past 12 years. Disclosures of fraud and abuse have required mid-sized and large nonprofit organizations to perform annual audits. Although whistleblower protection laws were revised with the Sarbanes-Oxley act few nonprofit organizations have whistleblower protection policies.

Independent Audits

All nonprofit organizations utilizing independent auditors should have independent audit committees. Independent audit committees of nonprofit organizations made up of independent members of the board of directors and the disclosure of at least one of these members as a financial expert is a requirement of section 407 of the Sarbanes-Oxley Act [13, 18]. This requirement exists so that the board of directors understands the financial statements and has the wherewithal to retain and supervise the external auditors [1, 13, 18, 20].

Whistleblower Protection

The whistleblower protections of Sarbanes-Oxley apply to both the public and nonprofit sectors. This provision protects employees by granting special damages and attorney's fees and prohibits employers from taking certain actions against workers who lawfully disclose information regarding a crime [1, 13, 18]. Sarbanes-Oxley also provides for criminal penalties for actions taken against whistleblowers.

IRS Revisions to Form 990

For the first time since 1979 The Federal Government has revised its IRS Form 990 to enhance the governance, transparency, and accountability of nonprofit organizations [1, 3, 10, 23]. Starting in the 2008 tax year, the redesigned 990 is meant to bridge the gaps in the previous 990 that had failed to meet the IRS's tax compliance interests and the transparency and accountability needs of the state and federal government [3, 23]. This revised form is meant to minimize the burden of filing on nonprofit organizations as well as to promote tax compliance [10, 23]. The increased disclosure to the IRS and, inevitably, the scrutiny of donors to these organizations has incorporated the principles and best practices introduced by the Sarbanes-Oxley Act [1, 3, 23].

These new requirements apply to all nonprofit organizations, which must now annually file a Form 990, and lower the thresholds at which nonprofit organizations must file from \$2.5 million to \$500,000 beginning in the 2010 tax year [1, 3, 23]. These changes seem to underscore the belief that the best practices developed under Sarbanes-Oxley and California's Nonprofit Integrity Act are no less relevant to nonprofit organizations [14, 18, 22, 23].

The relevance of transparency and accountability in nonprofit governance is clear. According to Bakale [1], there is concern among top officials of the federal government about issues of transparency among nonprofit organizations. Perhaps one of the core issues is poor governance. This issue has time and time again not kept up with modern practices and must be addressed [1, 23].

Past Research

In a 2008 research study, "Adoption of Sarbanes-Oxley Measures by Nonprofit Organizations," in which 600 South Carolina nonprofit organizations were surveyed on the voluntarily adoption of Sarbanes-Oxley provisions, the authors concluded that "many nonprofit organizations already have governance measures similar to those prescribed in [Sarbanes-Oxley]" [13]. This same study pointed out, however, that some of the largest for profit organizations have not implemented the simplest aspects of Sarbanes-Oxley such as whistleblower protection and code of ethics and conduct policies [13]. Mulligan opines that the costly disclosure requirements of the Sarbanes-Oxley Act will do little to prevent the unethical behavior that seems to be running rampant in nonprofit governance [14].

METHODOLOGY

Introduction

The purpose of this research study is to discover what impact an organizations unfamiliarity with the Sarbanes-Oxley act had on their compliance with whistleblower protections.

Research Design

This correlational study was approached from the epistemological perspective of post-positivism; the researcher used the tenant principles of the scientific method which, as Creswell [4] states, are "cause and effect thinking, reduction to specific variables and hypothesis and questions, use of measurement and observation, and test[s] of the theories." The relationships between size of an organization (predictor variable) and the secondary outcome variable (voluntary adoption of Sarbanes-Oxley) will be tested.

Participants

The participants were all 501(c)(3) non-profit organizations that file IRS Form 990 in Pennsylvania. To obtain this sampling frame I requested a list of all 501(c)(3) nonprofit organizations from Pennsylvania's Department of State. This electronic list contained the names, addresses and phone numbers of the organizations' contacts. The sampling procedure was done by randomly sorting this list and selecting the first 632 (10%) organizations. By choosing 10% the sampling margin of error was less than .01%. E-mail addresses were added to each of these 632 records by searching the Internet for the organization's name and address. In the event an organization did not have electronic

contact information available on the Internet, phone calls were made to request their participation. Of the 632 organizations contacted, 170 (27%) were eliminated for the following reasons: 1) 97 (15%) did not return the researcher's request for contact either by e-mail or phone call; 2) 35 (5%) requested not to be included in the study; 3) 34 (5%) expressed concerns over the confidentiality of the survey; and 4) 4 (2%) no longer exist or had become for-profit entities.

Responses were received from 153 organizations. By budget size there were 62 organizations of \$0 – \$500,000 and 91 organizations of \$501,000 – > \$1,000,000. By number of employees, there were 121 organizations with less than 100 employees and 32 organizations with greater than 100 employees. The individuals who responded were: Executive Directors (58), CEO (37), Vice President (17), Controller (14), Board Member (15) and 12 in the other category.

Survey Instrument

Iyer and Watkins [13] conducted a similar study in North Carolina using their own instrument that contained 31 questions. Because the instrument contained the kinds of questions suitable for answering my research questions, I adapted it, using 24 of their questions. The remaining 6 questions were removed from the survey because they did not pertain to my research.

This updated instrument contained 24 questions on six topics: demographics, awareness of Sarbanes-Oxley, audit committee and board of directors, whistleblower protections, certification of financial information, and internal accounting and information technology controls. The following sections describe each category and how the questions relate to the five research questions above.

The Demographics section of this survey contained four questions, with categorical responses. These questions asked the respondent's job title, whether the organization is headquartered in Pennsylvania the size of the organization's annual budget, and the number of employees the organization has. This information was used to describe the characteristics of the sample and to make inferences about the overall makeup of the sample.

The Awareness of Sarbanes-Oxley section of this survey contained two questions asking about familiarity with the Sarbanes-Oxley act and the IRS form 990. Responses options were "yes" or "no".

The Audit Committee and Board of Directors section of the survey contained nine questions to determine the organizations' overall financial control structures and independence. Response options for these questions were yes, no and ordinal.

The Whistleblower Protection section of the survey contained three questions to identify whether organizations have policies safeguarding employees that speak out against unethical abuses. Response options for these questions were yes, no and ordinal.

The Certification of Financial Information section of this survey contained two questions to determine how financial information is certified. The response options for these questions were yes and no.

The Internal Accounting and Information Technology Controls section of the survey contained four questions to determine how financial controls are implemented and certified. Response options for these questions were yes, no and ordinal.

Data Collection Procedures

Data collection occurred between June, 2010 and July 27, 2010. The researcher sent 462 e-mails that contained a hyper-link to the surveys. The e-mails were sent to the attention of the executive directors, CEO, Vice President, Controller or Board Members of the respective organizations. The email contained an introduction, explaining who I was and what information the study intended to collect and the hyperlink to the survey. Reminder notices were sent

bi-weekly with a final notice sent July 27, 2010. A total of 153 organizations completed the survey for a 33% response rate.

Data Analysis

Responses from the survey were analyzed using descriptive statistics on all variables. Correlations were performed to determine the relationship between the size of an organization (annual budget and employees) and their adoption of whistleblower protections.

ANALYSIS OF DATA

Introduction

The data used in this research study were collected using an electronic survey tool, *rmu.vovici.net*. The survey was modified by the researcher to determine what impact, if any, the revised IRS Form 990 had on Pennsylvania nonprofit organizations' adaption of Sarbanes-Oxley governance mechanisms into their governance. The survey was adapted from the Iyer & Watkins [13] study.

On June 28, 2010, The Vovici tool was scheduled to send out 531 electronic surveys. Reminder notices were sent bi-weekly with a final notice sent July 27, 2010. During this time 35 organizations requested removal. These requests fell into the following two categories: 1) the organizations representative felt they did not have time to complete the survey and 2) the organization's representative felt the e-mail soliciting a response for the studies research was spam and subsequently requested removal. An additional 34 organizations representatives requested removal for confidentiality concerns. The actual population for this research study was 462 organizations, making the margin of error for this sample plus or minus $\sqrt{(.50(1-.50)/462)} * 1.96 = 4.56\%$ A total 153 organizations completed the survey giving the researcher a 33.12% rate of return.

Survey Results

After dichotomizing the data in question 3 into organizations with an annual budget less than or equal to \$500,000 and those with a budget greater than \$500,000 the researcher found that there were 62 and 91 organizations, respectively. After dichotomizing the data from question 4 into organizations with 100 or fewer employees and those with more than 100 employees, the researcher found that there were 121 and 32 organizations, respectively. When these two new dichotomized variables were cross-classified, all 62 organization with a annual budget of \$500,000 or less were shown to have 100 or fewer employees (Small / Few), and of those with an annual budget of more than \$500,000, 59 had 100 or fewer employees (Large / Few) and 32 had more than 100 employees (Large / Many). Therefore, there were three types of organizations: 1) those with a small budget and few employees (62); 2) those with a large budget and few employees (59); and 3) those with a large budget and many employees (32).

Research question 1 asked *Are Pennsylvania nonprofit organizations familiar with the updated whistleblower provisions of the Sarbanes-Oxley Act?*

Overall, 76.7% of the organizations have provisions protecting whistleblowers (Question 16), and 51.7% indicated that they have made changes to their whistleblower provisions since revisions to the Form 990 or the enactment of Sarbanes-Oxley (Question 18). Again, there was a statistically significant difference by type of organization for both of these aspects. In Small / Few organizations, 50.9% have provisions protecting whistleblowers, while in Large / Few and Large / Many organizations the proportions were 91.5% and 96.9%, respectively $X^2(2, N = 150) = 36.57, p = <0.0001$. Also, in the Small / Few organizations, 33.3% have made changes in their whistleblower provisions while in Large / Few and Large / Many the proportions were 65.5% and 62.5%, respectively $X^2(2, N = 147) = 13.77, p = 0.001$.

In addition to having provisions to protect whistleblowers, 44.1% of the organizations indicated that they have a hotline for employees to report unethical activity (Question 17). The proportion with such a mechanism was also

associated with organizational type. In the Small / Few organizations, 24.6% have a hotline, while in Large / Few and Large / Many the proportions were 49.2% and 71.9%, respectively $X^2(2, N = 152) = 20.05, p = <0.0001$. The results are summarized below in *Table 1 – Whistleblower Protection*.

Research question 2 asked *Have small Pennsylvania nonprofit organizations that are unfamiliar with the Sarbanes-Oxley Act implemented whistleblower provisions?*

Overall, 76.7% of the organizations responded “yes” to question sixteen indicating that they had whistleblower protections established for their employees, indicating that about three-fourths of the organizations have implemented specific provisions to protect whistleblowers. However, less than one-half (44.1%) responded “yes” to question seventeen indicating that their organization provides a hotline to report unethical abuses anonymously. Slightly more than half (51.7%) of organizations responded “yes” to question eighteen indicating that they have made changes to their whistleblower protection policies since either the revisions to IRS Form 990 or the Sarbanes-Oxley Act. The results are summarized below in *Table 2 – Whistleblower protection response among all organizations*.

Table 1 – Whistleblower Protection

Question 16: Does your organization have any specific provisions that protect “whistleblowers” (Employees who report unethical activities)?			
Type of Organization	Yes	No	Total
<i>Frequency</i>			
<i>Percent</i>			
<i>Row Percent</i>			
<i>Column Percent</i>			
	30	29	59
Small / Few	20.00	19.33	39.33
	50.85	49.15	
	26.09	82.86	
	54	5	59
Large / Few	36.00	3.33	39.33
	91.53	8.47	
	46.96	14.29	
	31	1	32
Large / Many	20.67	0.67	22.38
	96.88	3.13	
	26.96	2.86	
Total	115	35	150
Percent	76.67	23.33	100.00
Frequency Missing = 6			
Question 16: Does your organization have any specific provisions that protect “whistleblowers” (Employees who report unethical activities)?			
Statistic	X^2 Value	Probability	
Chi-Square	36.57	<0.0001	

Research question 3 asked *Have Pennsylvania nonprofit organizations that are familiar with the whistleblower provisions of the Sarbanes-Oxley Act implemented whistleblower provisions?*

When considering only small organizations, those with an annual budget less than \$500,000, that indicated they were not familiar with the Sarbanes-Oxley Act of 2002 ("not very familiar" or "not at all familiar" as indicated in question 5), only 34.6% responded "yes" to question 16, indicating that they had implemented specific provisions to protect whistleblowers.

In addition, very few (14.3%) responded "yes" to question seventeen indicating their organization does not have a hotline to report unethical behavior. Additionally very few (14.8%) responded “yes” to question eighteen indicating that their organization has made changes to their whistleblower protection policies since either the enactment of Sarbanes-Oxley or the revisions to IRS Form 990. *Table 3 – Whistleblower protection response among organizations with budgets less than \$500,000.00 indicating unfamiliarity with Sarbanes-Oxley*.

Table 2 – Whistleblower protection response among all organizations.

Question 16: Does your organization have any specific provisions that protect “whistleblowers” (Employees who report unethical activities)?				
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Yes	115	76.67	115	76.67
No	35	23.33	150	100.00
Frequency Missing = 3				
Question 17: Does your organization provide a hotline as a means for employees to report unethical activity anonymously?				
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Yes	67	44.08	67	44.08
No	85	55.92	152	100.00
Frequency Missing = 1				
Question 18: Have you made changes to the whistleblower provisions since either the revision of IRS Form 990 or the enactment of Sarbanes-Oxley and the revisions to Form 990?				
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Yes	76	51.70	76	51.70
No	71	48.30	147	100.00
Frequency Missing = 6				

Table 3 – Whistleblower protection response among organizations with budgets less than \$500,000.00 indicating unfamiliarity with Sarbanes-Oxley.

Question 16: Does your organization have any specific provisions that protect “whistleblowers” (Employees who report unethical activities)?				
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Yes	9	34.62	9	34.62
No	17	65.38	26	100.00
Frequency Missing = 3				
Question 17: Does your organization provide a hotline as a means for employees to report unethical activity anonymously?				
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Yes	4	14.29	4	14.29
No	24	85.71	28	100.00
Frequency Missing = 1				
Question 18: Have you made changes to the whistleblower provisions since either the revision of IRS Form 990 or the enactment of Sarbanes-Oxley and the revisions to Form 990?				
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Yes	4	14.81	4	14.81
No	23	85.19	27	100.00
Frequency Missing = 2				

CONCLUSIONS

An extensive analysis of the study data resulted in a number of conclusions. These conclusions are based on the *highest percentage* answer for each survey question.

Research question 1 asked, *Are Pennsylvania nonprofit organizations familiar with the updated whistleblower provisions of the Sarbanes-Oxley Act?* This research question was answered by the following survey questions: 16) Does your organization have any specific provisions that protect “whistleblowers” (employees who report unethical activities); and 18) Have you made changes to the whistleblower provisions since either the revision of IRS Form 990 or the enactment of Sarbanes-Oxley and the revisions to Form 990?

The majority (76.7%) of survey respondents indicated that they had provisions protecting whistleblowers. A little over half (51.7%) of surveyed respondents indicated that they had made changes to their whistleblower provisions since either the revisions to IRS Form 990 or the enactment of the Sarbanes-Oxley Act. Among the organizations that indicated they were familiar with these updated provisions to the whistleblower protections, the Small / Few organization types came in last, at 50.9% for familiarity, while the Large / Few organization type came in at 91.5%, and the Large / Many organization type came in at 96.9%.

Interestingly, slightly less than quarter (23.3%) of survey respondents had no whistleblower protection plan. This raises some concerns about employee rights at smaller organizations as well as possible liability issues, but should come as no surprise because the whistleblower protection laws were revised when the Sarbanes-Oxley Act was signed into law. The real concern surrounding this finding (because the percentage is so low) was raised earlier in the results of survey question 5, *How familiar are you with the Sarbanes-Oxley Act of 2002?* Slightly more than quarter (28.1%) of all organizations surveyed indicated in their answers to that question that they were very familiar with the Sarbanes-Oxley Act. These percentages appear to be similar and are both reflective of answers received from those at the Small/Few organizations.

Research question(s) 2 and 3 asked, *Have small Pennsylvania nonprofit organizations that are unfamiliar with the Sarbanes-Oxley Act implemented whistleblower provisions; and Have Pennsylvania nonprofit organizations that are familiar with the whistleblower provisions of the Sarbanes-Oxley Act implemented whistleblower provisions?*

These research questions were answered by the following survey questions: 16) Does your organization have any specific provisions that protect “whistleblowers” (employees who report unethical activities); and 18) Have you made changes to the whistleblower provisions since either the revision of IRS Form 990 or the enactment of Sarbanes-Oxley and the revisions to Form 990?

A large majority (76.7%) of organizations indicated that they do have specific provisions protecting whistleblowers. Further, more than one-half (51.7%) have made changes since the revisions to IRS Form 990 or the enactment of the Sarbanes-Oxley Act. However, when looking at only those organizations with budgets less than \$500,000 that were *not* familiar with the Sarbanes-Oxley Act, only one-third (34.62%) indicated they had whistleblower provisions protecting their employees and few (14.81%) indicated they had made changes since the revisions to IRS Form 990 or the enactment of the Sarbanes-Oxley Act.

For smaller organizations, the costs associated with compliance to these revised regulations has increased their burden and decreased their benefit to the community because of how much of their budgets now must be spent on compliance. The IRS, realizing these burdens, has set reporting requirement thresholds; organizations with gross receipts less than \$25,000 are required to report annually using Form 990-N e-Postcard designed to ease this reporting burden. Those organizations with gross receipts greater than \$25,000, however, are required to report annually using Form 990.

RECOMMENDATIONS

The revisions to IRS Form 990 are a step in the right direction for holding organizational leaders accountable for their misconduct. Form 990 mandates changes in nonprofit governance by ensuring that certain financial and regulatory mandates are adhered to. While there is no denying that these types of controls are conducive to good organizational governance, no one has considered how small nonprofit organizations are organized, operate or even consider that there is only one employee, the owner/operator of the organization. Perhaps there is a reason why these numbers are so low and in fact most of these organizations may be one-man shops where the financial impact to implement a policy that only one person must follow is greater than the good as a whole is performing for the community at large.

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