

NONPROFIT MATTERS

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Message from PLC's Executive Director

Like any nonprofit, the Public Law Center seeks to adapt and change to meet the growing needs of our low-income client population. In response to this need, we have recently expanded our attorney staff, particularly in the areas of family and immigration law. Additionally, we have just overhauled our website to add new resources and information for the general public and our clients. We hope you find this edition of Nonprofit Matters useful for your organization as you change and adapt to meet the needs of clients, donors, and regulatory bodies.

- Ken Babcock

Nothing in this newsletter should be construed as legal advice. For more information about complying with the various laws mentioned in this newsletter, please consult a legal or tax professional.

CRA at 30: A Reflection on Community Investment

It would be hard to miss all the news coverage about the "subprime" mortgage foreclosure crisis and other financial issues facing low-income families these days. The [Center for Responsible Lending](#) estimates that approximately 2.2 million Americans may lose their homes due to foreclosure this year.

Unfortunately, creditors often target low-income and minority individuals with predatory or fraudulent lending practices or other tactics, such as high interest rates and penalties. For these individuals who

already face difficulties in obtaining financing for cars, homes, and education, bank practices that have historically further disenfranchised low-income communities certainly do not help any.

One Congressional response to even the financial playing field has been the Community Reinvestment Act (CRA). CRA was enacted in 1977 to encourage



financial institutions, such as commercial banks, to invest in their communities and to help meet the credit needs of low-income individuals and families. According to the [National Community Reinvestment Coalition](#), over its thirty year history, CRA "has leveraged more than \$4 trillion in loans and investments to underserved communities."

The Act encourages lending in low and moderate income communities by creating a regulatory framework for monitoring the level of

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IRS Clarifies Advocacy Rules for 501(c)(3)s

In response to illegal political activity by nonprofits during the 2006 election cycle and in preparation for the 2008 election season, the IRS released Revenue [Ruling 2007-41](#) that details prohibited election-related activities for 501(c)(3) organizations.

Organizations that are exempt under Section 501(c)(3) of the Internal Revenue Code may not

intervene in any political campaign on behalf of or in opposition to any candidate for public office.

However, 501(c)(3) nonprofits may engage in public policy work and limited lobbying activities. As described in a special edition of [Nonprofit Matters](#) last year, the rules present a lot of gray areas and it is sometimes difficult for

organizations to know if they are crossing over the lines. Whether an organization is illegally intervening in a political campaign is often a question of facts and circumstances of each situation. In some cases, an organization's legal public policy activities (for instance issuing a report or conducting a voter registration drive)

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When Should a Nonprofit Amend its Bylaws?

Although most nonprofit executives and board members' eyes glaze over at just the thought of reviewing the corporate bylaws, it is essential that bylaws are regularly reviewed and amended. As organizations grow and change, you need to ensure that the provisions in your bylaws conform to your current procedures and operations.

Bylaws are a legally binding document of the nonprofit and compliance with them is important to limit liability and to demonstrate accountability to government agencies, donors, and the public. For instance, if you are not following the procedures laid out in your bylaws, your board members could be at risk for liability related to corporate actions. Additionally, in the post-Enron world we live in, many donors and government agencies are paying closer attention to corporate governance issues, such as compliance with bylaws and other documents.

Revising your bylaws can also help

your organization strategically plan for the future by adding provisions such as director term limits, additional board committees, or a conflicts of interest policy.



Since the laws and regulations that apply to nonprofits change frequently (and increasingly so in recent years), a best practice is to review your bylaws at least once a year. However, this may be impracticable for smaller organizations that do not have a Board Committee devoted to bylaws. For these organizations, bylaws should be reviewed at least

once every three years and at any time the organization's operations change in a material way.

Bylaws are generally easy to amend: for most organizations, all it takes is a majority vote of the Board of Directors. There are sample provisions available to fit most situations, and your organization may even be eligible for pro bono legal services from the Public Law Center to help you review and amend your bylaws. Once your bylaws are amended, be sure to send in a copy to the IRS, the Franchise Tax Board, and the Attorney General with your annual returns. Also update any information on your website, in board manuals, and other places where you keep copies of your corporate documents.

If you are interested in obtaining PLC pro bono assistance to help you revise your bylaws or answer other corporate governance questions, please contact PLC at (714) 541-1010.

Updates from the IRS

In response to the Pension Protection Act, signed into law last August, the IRS has been issuing new guidance on its [website](#). The website outlines key provisions on the new law, including the IRA Rollover incentives and the new 990-N (an annual notice for small organizations that are exempt from filing a regular 990). As this law created a number of significant new requirements for 501(c)(3) organizations, the IRS has yet to clarify everything. The IRS will post new notices and explanations as they become available, so check the website as you have questions.

A significant new charitable giving incentive incorporated into the Pension Protection Act is the IRA rollover provisions. The law allows

individuals aged 70 1/2 and older to exclude up to \$100,000 per year transferred from their IRA to a 501(c)(3) charity as gross income that would be subject to tax. The [Association of Fundraising Professionals](#) (AFP) estimates that the provision has brought in over \$69 million to the charitable sector since the Pension Protection Act has been passed. Unfortunately, this provision ends at the end of the year, so only IRA donations from tax years 2006 and 2007 qualify. [HR 1419](#), the Public Good IRA Rollover Act of 2007, has been introduced to make the IRA Rollover provisions permanent. However, this legislation has not advanced beyond committee. Please check AFP's and [Independent Sector's](#) websites for more information and updates on the

status of this bill.

The other big federal issue facing nonprofits right now is a proposed overhaul of the Form 990. The IRS has incorporated new requirements from the Pension Protection Act into the Form 990 for tax year 2006, but the agency is in the process of completely revising the form for tax year 2009 and beyond. The IRS released a [draft of the new form](#) in June seeking public comment. The revised version seeks to increase financial transparency while at the same time minimize the preparation burden for organizations. Additional information on the 990 revisions is available from the [Association of Fundraising Professionals](#).

New Laws Affecting Your Clients

State Budget



The big news coming out of this legislative season was the delay in passing a budget for state fiscal year 2007-08. The delay in passing a budget had all sorts of impacts, including postponing benefits checks from state agencies and payments from state contracts. After a reconciliation between the Senate, Assembly, and the Governor's office, the Governor finally signed this year's budget on August 24th. For more information on the enacted budget and the budget process, visit the [California Department of Finance's website](#). More information on the budget's impact on Health and Human Service programs is available from the [California Budget Project](#).

Employment Law

Although California passed its own higher standard last year that governs California employers, Congress raised the federal minimum wage to \$5.85 per hour. The bill, effective July 24, 2007, also includes an annual increase of up to \$7.25 effective July 24, 2009. More information on the new law can be found on the [Department of Labor's webpage](#).

[AB 537](#) will expand state Family Leave provisions by eliminating the age and dependency elements from the definition of "child," which would permit an employee to take protected leave to care for his or her independent adult child suffering from a serious health condition and permitting an employee to take leave to care for a family members other than children who are seriously ill. AB 537 has passed the Senate and now just needs reconciliation with the Assembly version and approval from the Governor.



Immigration Law

U.S. Immigration and Customs Enforcement (ICE) announced that their new regulations, 8 CFR 247a, have been sent to the Federal Register for publication. The regulations re-define employer "constructive knowledge" in the context of verifying eligibility to work through the I-9 process. More information is available in [this article](#) from the law firm of Sheppard Mullin Richter & Hampton LLP.

The U.S. Citizenship and Immigration Service (USCIS) announced a [new fee schedule](#) for filing various immigration applications. The new fees went into effect July 30th.

USCIS also announced [interim rules](#) for processing U-Visa applications for crime victims.

Education

The No Child Left Behind (NCLB) Act is the current version of the Elementary and Secondary Education Act. Portions of NCLB are set to expire at the end of the year unless they are reauthorized by Congress. President Bush and the Department of Education are [supporting reauthorization](#). On the other side, the National Education Association is supporting [68 alternative bills](#) that, in their opinion, would improve the Act. For more information on these bills and their status in Congress, please visit the Library of Congress's [Legislative Information webpage](#).



Access to Justice

Washington State Court case *King v. King* is exploring the issue of a right to counsel in civil cases. Low-income Appellant Brenda King argued that she was denied a fair trial because she did not receive

counsel to help her with her divorce and child custody case. Although the case is pending before the Washington Court of Appeals, it is one that all of us in the legal services community are watching. According to the Brennan Center for Justice at New York University School of Law, "fewer than 20% of low-income families with civil legal needs are ever able to obtain the services of counsel to assist them in gaining access to the courts" and the *King* case could be a landmark ruling to address that issue.

Housing & Homelessness

In addition to addressing regulatory issues with Fannie Mae, Freddie Mac and the Federal Home Loan Banks, the Federal Housing Finance Reform Act, [HR 1427](#), would create a new Affordable Housing Fund that will provide funding for the construction, maintenance and preservation of affordable housing. HR 1427 has been passed by the House and is currently pending with the Senate Finance Committee.

Every five years, cities across California must amend the Housing Element portions of their General Plans. Housing Elements are revised based on a Regional Housing Needs Assessment (RHNA) conducted by the Southern California Association of Governments. The final RHNA allocation came out in July and now cities will be busy amending their Housing Elements to comply with a statutory deadline of June 30, 2008.

[AB 607](#) requires residential hotels to provide a locking mailbox for residents. The bill still needs a signature from the Governor before it becomes law.



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investments, lending, and services provided to these communities. Once every two years for large banks and once every five years for small banks, examiners from federal agencies assess and “grade” a lending institution’s activities in low and moderate income neighborhoods. Banks receive “outstanding,” “satisfactory,” “need to improve,” or “substantial non-compliance” ratings. The law provides potential penalties for banks that receive the last two grades, including delaying or denying an institution’s request to merge with another lender or expand services, such as opening a branch office. For more information on CRA, please visit the National Community Reinvestment Coalition’s (NCRC) [website](#).

In response to CRA’s success in promoting financing for low-income families, proponents have introduced the CRA Modernization Act of 2007, [HR 1289](#). If passed, the bill will expand CRA to cover bank lending through brokers, mortgage companies, insurance firms, and securities companies. The bill would also amend CRA to require a rating reduction for a regulated financial institution engaged in negative credit practices, including predatory and discriminatory lending. HR 1289 was referred to the House Committee on Financial Services in March, but has not made it to the floor of either Congressional Chamber. Please check with the Library of Congress’ [legislative information website](#) for updates on the status of this bill.

The Urban Institute recently released its [Framework for a New Safety Net for Low-Income Working Families](#).

Of course, CRA is just one step in protecting the interests of low-income consumers. There have been a number of bills introduced in this Congressional session to curb the current foreclosure crisis. The Congressional bills include the Borrower’s Protection Act of 2007, the Fairness for Homeowners Act of 2007, and the Fair Mortgage Practices Act. The Borrower’s Protection Act, S 1299, seeks to regulate real estate brokers by establishing fiduciary duties that they must follow. The Stopping Mortgage Transactions which operate to Promote Fraud, Risk, Abuse and Underdevelopment Act, S 1222, introduced by Senator Obama (D-IL), would make defrauding a borrower a crime under federal law. The Fairness for Homeowners Act, S 3081, was introduced by Representative Ellison (D-MN) to protect consumers in certain high risk transactions, such as refinancing. Finally, the Fair Mortgage Practices Act, HR 3012, would require national broker licensing and would enhance disclosure provisions for financial transactions. For a more complete summary of these bills, please see [this comparison](#) from NCRC.

Courts have even started to address the financial needs of low-income and other unrepresented communities. In *Sisemore v. Master Financial* (2007), the Sixth Appellate District of the California Court of Appeal held that a licensed family day care home operator who claimed to have suffered discrimination in applying for a home loan could state a legal claim for discrimination under the Fair Employment and Housing Act (FEHA). Master Financial refused to lend to Ms. Sisemore because it had a policy that it would “not make loans with home day care if the home

The Neighborhood Economic Development Advocacy Project just released new resources for consumers in [English](#) and [Spanish](#). The resources cover a wide range of topics that impact low income consumers, including debt collection, credit reports, and identity theft.

day care income is required to qualify.” The case marks the first time that a California Court applied the source of income discrimination doctrine of FEHA to mortgage lending practices of financial institutions.

The Public Law Center also hopes to do our share to promote community investment. We recently started two new programs to help address the economic needs of low-income families and communities.

First, the Child Care Law Project provides free legal assistance to existing or potential state licensed family child care providers and child care centers to help them address the variety of legal issues they face. In particular, we may be able to assist a provider in obtaining a conditional use permit or address land use barriers or assist a child care center in starting-up, incorporating, and gaining tax-exempt status.

One of our newest projects, the Micro-Entrepreneur Legal Assistance Project (MELAP), provides free legal services, training and resources for qualified low-income business owners through staff and pro bono attorneys. The idea behind MELAP is to help low-income individuals start a business to bring themselves out of poverty. Priority is given to businesses that will be located in low-income communities. If your organization has low-income clients that are interested in starting a business, please refer them to PLC for assistance.

New State Nonprofit Laws

Charity Gaming

Passed last year, a new provision in the Gambling Control Act allows eligible 501(c)(3) nonprofits to conduct gaming activities, such as poker nights, as charitable fundraisers. For a complete description of this bill, see our last edition of *Nonprofit Matters*. Additional information can be found on the Attorney General's Division of Gambling Control [website](#). Although these activities are now legal in California, organizations that conduct gaming need to be wary of complex federal and state tax issues, such as Unrelated Business Income Tax. The IRS recently held a phone forum on the issue, and materials from the forum are available on the agency's [website](#).



charity wine tasting events and other fundraisers. The bill has been signed by the Governor and is now law. Guidance on the new law is expected to be posted on the California Department of Alcoholic Beverage Control's [website](#).

State Tax-Exemption

[AB 897](#) seeks to eliminate the requirement that newly formed nonprofits obtain separate tax-exemption from the Franchise Tax Board, even if the IRS has already determined that they are exempt.



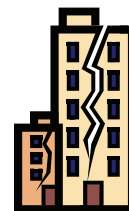
Obtaining separate tax-exemption from the state produces a significant time and resources burden for new organizations, and this bill will put California in line

with many other states that do not require separate exemption. Instead, organizations would merely have to send in a copy of their IRS determination letter. The bill has passed both chambers and is now

with the Governor. If passed, it will become effective January 1, 2008.

Reimbursement for Expenses Spent on Disaster Response

[AB 903](#) would authorize reimbursement of selected expenses of nonprofit organizations that respond to disasters and other emergencies. Specifically, organizations that are eligible for specified disaster assistance under federal law would be eligible for state assistance, distribution of supplies, and other disaster or emergency assistance. [AB 903](#) has been approved by the Assembly and is currently pending with the Senate Appropriations Committee.



For text and status updates of state law, visit the [Official California Legislative Information website](http://leginfo.ca.gov/bilinfo.html) at <http://leginfo.ca.gov/bilinfo.html>.

“New Advocacy Rules” cont. from pg. 1

can become illegal campaign intervention.

This Revenue Ruling marks the first time in decades that the IRS has embodied some of their guidance in a legally-binding regulation applicable to all 501(c)(3) organizations. The Ruling details 21 situations of organizations involved in various advocacy and election-related activities. For each situation, the IRS identifies whether the organization complied with the law, so the examples are a helpful way for your organization to understand the ins and outs of these rules.



The ruling comes on the heels of a compliance investigation [that revealed](#) nearly three-quarters of charitable organizations investigated by the IRS had engaged in some prohibited political activity during the 2004 election. The IRS announced that they will be conducting a similar Political Activities Compliance Initiative (PACI) after each election season.

Organizations that engage in prohibited campaign activities could face excise taxes or even lose their tax-exemption.

For more information about the Revenue Ruling and its implications for nonprofits, please visit the [IRS's webpage](#).

Additional analysis can be found on [OMB Watch's website](#).

U.S. Supreme Court Takes on Nonprofit Advocacy

In [Wisconsin Right to Life v. Federal Election Commission](#) (2007), the Supreme Court held that a portion of the Bipartisan Campaign Reform Act (commonly called the McCain-Feingold Act) that prevented issue ads mentioning a candidate name 30 days before a primary election and 60 days before a general election is unconstitutional. In essence, the Supreme Court held that these ads could be legitimate nonprofit advocacy and not prohibited electioneering and therefore the BCRA could not prohibit them.



PROVIDING ACCESS TO JUSTICE
FOR ORANGE COUNTY'S LOW INCOME RESIDENTS

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The Public Law Center, Orange County's pro bono law firm, is committed to providing access to justice for low-income residents. Through volunteers and staff, the Public Law Center provides free civil legal services, including counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices. Now in its 26th year, PLC is sponsored by the Orange County Bar Association and is supported by lawyers throughout the county.

PLC may be able to assist your clients who are low-income Orange County residents and have certain types of immigration, family law and civil legal problems, including: landlord-tenant, homeownership, collection, bankruptcies, consumer, estate-planning, discrimination, employment, adoptions, guardianships, custody matters, divorces involving children or domestic violence, and immigration work for survivors of crime or domestic violence. To determine whether your clients are eligible for services, they may contact the [Legal Aid Society of Orange County](#), which regularly refers cases to PLC, or attend one of PLC's clinics at various homeless shelters and community organizations around Orange County. Information about our clinics can be received by calling our front desk at 714-541-1010 or by visiting our [website](#).

About COLAP

PLC's Community Organizations Legal Assistance Project (COLAP), through staff and pro bono volunteer attorneys, provides free transactional legal assistance to local non-profit organizations that face a variety of business law issues in areas such as contract law, employment law, fundraising law, corporate governance law, and real estate law. For instance, COLAP can match organizations with attorneys to review and draft bylaws, employment handbooks, service provider contracts, and commercial leases. COLAP also provides free legal assistance to those interested in starting new nonprofit organizations designed to benefit Orange County's low-income population.



business law related issues, COLAP assists organizations through a legal check-up program. Through this program, volunteer attorneys and law students conduct legal checkups of organizations to make sure they are complying with various state and federal laws. The service allows organizations to address legal issues before they become a problem. If nonprofits do not comply with legal requirements, they may be subject to administrative fines or they can even lose their tax-exempt status. This project helps organizations avoid these consequences.

COLAP is sponsored by the law firm of Buchalter Nemer, Equal Justice Works, and AmeriCorps.

For more information on COLAP services, please visit our [webpage](#), or contact PLC at 714-541-1010.

In addition to providing direct representation on a number of

Upcoming Workshops

Avoiding Legal Trouble (Legal Checkup for Nonprofits)
October 31, 9 a.m. - 12 p.m.
The workshop will cover a variety of legal issues including, government registration, corporate governance, and employment law.

How to Start a 501(c)(3)
Nonprofit Corporation
November 29, 9 a.m. - 12 p.m.

For more information about these events, contact the Public Law Center at 714-541-1010. These workshops are made possible through a partnership with the Volunteer Center of Orange County. To register, please visit <http://www.volunteercenter.org>

