Chapter 1

History and Legislative Background of the Sarbanes-Oxley Act of 2002

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The scene is an elegant Minneapolis restaurant. Five professionals are having lunch together. Lois is the CFO of a well-known nonprofit in the Twin Cities. Shelly is an attorney with a prominent law firm. Peg is an author and consultant. Toni is a professor, author, and consultant. Virginia is a community volunteer who sits on a number of prestigious nonprofit boards. She is also the Chair of the Board of a historic Minneapolis landmark. The women met for lunch that day because they were colleagues on a pro bono project. Peg attempted, again, to convince Virginia that the conflict of interest presented by a staff member was indeed a serious issue, and the discussion turned to Sarbanes-Oxley. Virginia emphatically stated, "Sarbanes-Oxley has nothing to do with nonprofits! You don't know what you are talking about!" Both Peg and Toni attempted in vain to dissuade Virginia of this notion.

Yes, Virginia, Sarbanes-Oxley does apply to nonprofits!

Chapter Overview

Although the Sarbanes-Oxley Act (SOX) of 2002 was passed primarily in response to wrongdoing and fiscal mismanagement in public companies, one of its effects has been to promote greater accountability within both the nonprofit and private sectors. Although the majority of management, finance, and accounting scandals in the early years of the 21st century involved public companies such as Enron, WorldCom, Adelphia Communications, and AOL Time Warner, the nonprofit world had its share of high-profile scandals, such as those involving the American Red Cross and the United Way. Recent Senate Finance Committee hearings, testimony from Mark W. Everson (Commissioner of the Internal Revenue Service), and passage of the Nonprofit Integrity Act in California all suggest a growing mistrust in the integrity of the nonprofit sector and

a call for accountability. To better understand the implications of SOX on nonprofits, this chapter will review the legislation and its legislative roots, the two SOX provisions that currently apply to nonprofits, the scandals that drove passage of SOX, pertinent Senate hearings and reports, and the efforts to adopt SOX "clones," targeting nonprofit accountability.

Chapter Objectives

By the end of this chapter, you should be able to:

- Identify the composition requirements and responsibilities of the Public Company Accounting Oversight Board
- Outline the general requirements of SOX pertaining to auditor independence, the role of the audit committee, and the corporate responsibility for financial reports
- Define the concepts of internal controls for financial reporting and disclosure controls
- Summarize corporate accountability for document preservation and whistleblower protection
- Identify the SOX provisions that currently apply to all corporations, including nonprofits
- Discuss the testimony of relevant witnesses at the 2004 and 2005 hearings of the U.S. Senate Finance Committee
- Outline the general requirements of the Nonprofit Integrity Act of 2004 (SB 1262) in California
- Discuss the proposals made by the Panel on the Nonprofit Sector and released by the Congressional Joint Committee on Taxation in 2005

Passage of the Sarbanes-Oxley Act of 2002

The Public Company Accounting Reform and Investor Protection Act of 2002 (P.L. 107–204), which typically is referred to as the Sarbanes-Oxley Act (SOX) of 2002, was signed into law by President George W. Bush on July 30, 2002. SOX has been described as the "most far-reaching reforms of American business practices since the time of Franklin Delano Roosevelt" (Office of the Press Secretary, 2002). Only the Securities Act of 1933 and the Securities Exchange Act of 1934 rival the act in its effects on public accounting, financial disclosure, and corporate governance. The act significantly broadens the authority and resources of the Securities and Exchange Commission (SEC) to monitor and regulate the securities market, and provides stiff penalties for noncompliance. In essence, the legislation complements the aim of the Securities Act of 1933 to provide "truth in securities" by improving the quality of financial report-

ing, independent audits, corporate accountability, and accounting services for public companies.

Compared to other legislative acts passed by Congress, SOX became law relatively quickly. On February 14, 2002, House Representative Michael G. Oxley (R-OH), the Chairperson of the House Committee on Financial Services, introduced H.R. 3763 (H.R. 3763, 2002). The purpose of the proposed legislation was "to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes." The bill had 30 House cosponsors, and was passed by the House on April 24, 2002 by a vote of 334 to 90.

On June 25, 2002, Senator Paul S. Sarbanes (D-Maryland), the Chairperson of the Senate Committee on Banking, Housing, and Urban Affairs, introduced S. 2673 (S. 2673, 2002). The purpose of this proposed legislation was "to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes." The Senate passed the bill on July 15, 2002 by a vote of 97 to 0.

Both the Senate and the House almost unanimously passed the Conference Committee Report (H.R. Rep. No. 107-610, 2002) that resolved differences in the two bills, 423 to 3 in the House and 99 to 0 in the Senate. On July 30, 2002, President George W. Bush signed the bill, and the sweeping reforms required by the act became public law (P.L. 107-204, 2002).

Analysis of the Legislative and Regulatory Content of SOX

As can be seen in Exhibit 1.1, SOX (P.L. 107-204, 2002) consists of 11 titles, with each title having multiple sections:

Title I: Public Company Accounting Oversight Board

Section 101 of Title I in SOX created the Public Company Accounting Oversight Board (PCAOB), which has extensive authority to monitor and regulate the audits and auditors of publicly held companies.

Funding Sources and Budget

The PCAOB is a nonprofit organization that is funded by public accounting firms and publicly held companies; the PCAOB is not a U.S. government agency. Partial funding for the PCAOB comes from the registration application fees and annual fees

of public accounting firms that want to be authorized to provide auditing services to publicly held companies. Although the PCAOB has the authority to levy annual fees to offset the costs of reviewing annual reports submitted by the registered firms, it has not yet done so. Currently, the requirement for registered firms to submit annual reports has not been initiated. Since there are no annual reports to review, there are no reviewing costs and thus no annual fees. Once the requirement for the submission of annual reports is initiated, registered firms will be charged an annual fee. Additional funding comes from "accounting support fees" paid by companies defined as "issuers."

Exhibit 1.1 SOX titles and sections

Title	Section
I. Public Company Accounting Oversight Board	101: Establishment, administrative provision 102: Registration with the Board 103: Auditing, quality control, and independence standards and rules 104: Inspections of registered public accounting firms 105: Investigations and disciplinary proceedings 106: Foreign public accounting firms 107: Commission oversight of the Board 108: Accounting standards 109: Funding
II. Auditor Independence	201: Services outside the scope of practice of auditors 202: Pre-approval requirements 203: Audit partner rotation 204: Auditor reports to audit committees 205: Conforming amendments 206: Conflicts of interest 207: Study of mandatory rotation of registered public accounting firms 208: Commission authority 209: Considerations by appropriate State regulatory authorities
III. Corporate Responsibility	301: Public company audit committees 302: Corporate responsibility for financial reports 303: Improper influence on conduct of audits 304: Forfeiture of certain bonuses and profits 305: Officer and director bars and penalties 306: Insider trades during pension fund blackout periods 307: Rules of professional responsibility for attorneys 308: Fair funds for investors
IV. Enhanced Financial Disclosures	401: Disclosures in periodic reports 402: Enhanced conflict of interest provisions 403: Disclosure of transactions involving management and principal stockholders 404: Management assessment of internal controls 405: Exemption 406: Code of ethics for senior financial officers

Title	Section
	407: Disclosure of audit committee financial expert 408: Enhanced review of periodic disclosures by issuers 409: Real-time issuer disclosures
V. Analyst Conflicts of Interest	501: Treatment of security analysts by registered securities associations and national security exchanges
VI. Commission Resources and Authority	601: Authorization of appropriations 602: Appearance and practice before the Commission 603: Federal court authority to impose penny stock bars 604: Qualifications of associated persons of brokers and dealers
VII. Studies and Reports	701: GAO study and report regarding consolidation of public accounting firms 702: Commission study and report regarding credit rating agencies 703: Study and report on violators and violations 704: Study of enforcement actions 705: Study of investment banks
VIII. Corporate and Criminal Fraud Accountability	801: Short title 802: Criminal penalties for altering documents 803: Debts nondischargeable if incurred in violation of securities fraud laws 804: Statute of limitations for securities fraud 805: Review of Federal sentencing guidelines for obstruction of justice and extensive criminal fraud 806: Protection for employees of publicly traded companies who provide evidence of fraud 807: Criminal penalties for defrauding shareholders of publicly traded companies
IX. White Collar Crime Penalty	901: Short title 902: Attempts and conspiracies to commit criminal fraud offenses 903: Criminal penalties for mail and wire fraud 904: Criminal penalties for violations of the Employee Retirement Income Security Act of 1974 905: Amendment to sentencing guidelines relating to certain white-collar offenses 906: Corporate responsibility for financial reports
X. Corporate Tax Returns	1001: Sense of the Senate regarding the signing of corporate tax returns by Chief Executive Officers
XI. Corporate Fraud and Accountability	1101: Short title 1102: Tampering with a record or otherwise impeding an official proceeding 1103: Temporary freeze authority for the Securities and Exchange Commission 1104: Amendment to the Federal Sentencing Guidelines 1105: Authority of the Commission to prohibit persons from serving as officers or directors 1106: Increased criminal penalties under Securities Exchange Act of 1934 1107: Retaliation against informants

Registration Application Fee As can be seen in Exhibit 1.2, the amount of the application fee varies, dependent upon the number of issuer clients the applying firm audited during the year previous to the application. For firms with more than 100 clients, the fees are significantly higher than for those firms with fewer than 101 clients (Public Company Accounting Oversight Board, 2004; Public Company Accounting Oversight Board, 2005).

Accounting Support Fee A major source of funding for the PCAOB is the "accounting support fee," which is paid by "equity issuers" and "investment company issuers." The PCAOB defines equity issuers as publicly traded companies with average monthly equity market capitalization greater than $25 million during the prior calendar year. Investment company issuers are registered investment companies and issuers that have chosen to be regulated as business development companies and had an average monthly market capitalization or net asset value greater than $250 million during the prior calendar year. The total amount of the accounting support fees is equal to the SEC-approved PCAOB budget, less the amounts collected in the previous year from registration application fees and annual fees. The basis for the accounting support fee paid by individual equity issuers and investment company issuers is the relative average monthly U.S. market capitalization. Each issuer's share is its average monthly U.S. market capitalization during the preceding calendar year, divided by the sum of the average monthly U.S. market capitalization of all equity and investment company issuers (PCAOB, 2005).

Budget The PCAOB develops its budget and submits it to the SEC for approval. In the 2004 PCAOB budget, the net outlays were $103.297 million. The registration application fees for 2003 totaled $2.050 million, making the total accounting fee

EXHIBIT 1.2 REGISTRATION APPLICATION FEE

Number of Issuer Clients	Fee
0	$250
1–49	$500
50–100	$3,000
101–1000	$29,000
1001 and greater	$390,000

$101.247 million ($103.297 million–$2.050 million). For the 2005 PCAOB budget, the net outlays were $136.418 million. The registration application fees for 2004 totaled $308,000, making the total 2005 accounting fee $136.110 million ($136.418 million–$308 thousand).

PCAOB Membership

The PCAOB has five full-time members, each with a five-year appointment term and a two-term limit. While serving on the PCAOB, none of the members may engage in any other professional business activity or be employed. No member may share in any of the profits of a public accounting firm, nor may any member receive any payments from a public accounting firm, other than fixed continuing payments such as retirement payments. The SEC has the responsibility of appointing all five members, but it must do so in consultation with the Secretary of the Treasury and the Chair of the Federal Reserve Board. The SEC has the authority to remove any member "for good cause."

While all members of the PCAOB must be financially literate, only two of the members must be or have been certified public accounts (CPAs). The remaining three members must not and cannot have been CPAs. While the PCAOB Chair may be one of the two CPA members, he or she must not have been engaged as a practicing CPA for at least five years prior to PCAOB appointment.

PCAOB Membership The current PCAOB members and their previous professional activities are as follows:

- **William J. McDonough, Chair**: Previously president and chief executive officer (CEO) of the Federal Reserve Bank of New York
- **Kayla J. Gillan, Member**: Previously with California Public Employees' Retirement System (CalPERS) where she served as its chief legal adviser with expertise in public pension, trust, and securities law
- **Daniel L. Goelzer, Member**: CPA, and formerly a partner at the law firm of Baker & McKenzie and general counsel to the SEC; practice focused on securities and corporate law
- **Willis D. Gradison, Jr., Member**: Previously a nine-term member of Congress (Ohio), former head of the Health Insurance Association of America, and former lobbyist at the Washington firm of Patton Boggs, LLP
- **Charles D. Niemeir, Member**: CPA, previously with the SEC where he was the co-chair of the Financial Fraud Task Force and the Chief Accountant in the Division of Enforcement

PCAOB Duties and Responsibilities

Under Section 102, only public accounting firms approved for registration with the PCAOB are authorized to prepare or issue audit reports on the financial statements of companies registered with the SEC. The application for registration requires the accounting firm to provide detailed information regarding its audit clients, internal quality control policies and procedures, accounting personnel, licensure, and financial standing. To maintain registration, approved firms must agree to undergo periodic inspections, and once the requirement for annual reports is instituted, approved firms must provide annual reports to the PCAOB. Some firms may be required to report more frequently than annually, and may be asked to supply additional information or update the initial application.

In addition to evaluating and approving firms for registration, the PCAOB has a number of other duties and responsibilities. Under Sections 103, 104, 105, 107, and 109, the PCAOB must:

- Set its budget and manage the operations of the PCAOB and its staff; funding comes from firm registration fees and accounting support fees from publicly held companies or issuers
- File an annual report with the SEC
- Establish or adopt, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports
- Enforce compliance with SOX, PCAOB rules, professional standards, and the securities laws relating to the preparation and issuance of audit report and the related obligations and liabilities of auditors
- Conduct investigations of registered firms, replacing the traditional firm-in-firm peer review system
- Establish procedures to investigate and discipline registered firms and their personnel if suspected of rules violations
- Conduct disciplinary proceedings and impose appropriate sanctions; sanctions can include revoking or suspending a firm's registration and financial penalties up to $15 million
- Submit all disciplinary sanctions to the SEC for review; the SEC may modify or cancel sanctions

Examples of Disciplinary Proceedings and Sanctions In a recent violations case, the PCAOB revoked the registration of Goldstein and Morris CPAs, P.C., and barred Edward B. Morris, who was the co-founder, president, and managing partner in the firm, from being an associated person of a registered public accounting firm. The PCAOB imposed these sanctions against the firm and Morris for concealing information from

the PCAOB and for submitting false information during the course of a PCAOB inspection (PCAOB, 2005). As part of an inspection, the PCAOB requested information regarding the audits of two companies, New York Film Works, Inc. and RTG Ventures, Inc. One of the employees of the accounting firm had both worked on the audits of the companies and helped in the preparation of the financial statements. Auditors are prohibited from supplying accounting services, such as financial statement preparation, to their audit clients, and records regarding these services were omitted from the materials submitted to the PCAOB.

Alan J. Goldberger, CPA, and William A. Postelnik were partners at Goldstein & Morris at the time the false information was submitted and participated in discussion with Morris about concealing the records and falsifying the information, and helped to develop the plan to do so. The PCAOB censured both Goldberger and Postelnik for their misconduct. The sanctions were limited to censures because Goldberger and Postelnik voluntarily contacted the PCAOB and disclosed the violation (PCAOB, 2005).

Title II: Auditor Independence

Title II of SOX seeks to establish auditor independence from the company being audited by defining and limiting the services the auditing may provide, and by setting the engagement standards of the auditor and the company.

Prohibited Services

Under Section 201, the auditor is prohibited from providing the following services:

- Bookkeeping or other services related to the accounting records or financial statements
- Financial information systems design and implementation
- Appraisal or valuation
- Actuarial
- Expert services unrelated to the audit
- Internal audit outsourcing
- Management and human resources functions
- Investment advisor, investment banking, or broker-dealer
- Legal

Engagement Standards

In regard to the engagement standards, Sections 202, 203, and 206 require the audit committee to preapprove all services provided by the auditor before the auditor is

engaged, oblige the audited firm to rotate its auditors on a regular basis, define and prohibit conflicts of interest between auditors and the audited company, and require the auditing committee of the audited company to be responsible for the oversight of its auditors. In addition, Section 204 identifies specific information the auditor must convey to the audit committee before the audit report is issued. The auditor must communicate the following:

- All critical accounting policies and practices used in preparing the financial statements, including any changes to those policies and procedures
- All alternative treatments of financial information that are within generally acceptable accounting principles (GAAP) that have been discussed with management
- Any material written communications between the accounting firm and the company's management

Title III: Corporate Responsibility

Title III of SOX imposes new obligations on the senior management team, the audit committee, and the attorneys of companies registered with the SEC. In addition, Title III contains provisions to guard against profiteering from issuing misleading financial information about the company to the public, to protect pension funds, and to remove individuals from management of the board for wrongdoing.

Senior Management Team Obligations

For the senior management team, Section 303 makes it unlawful for any officer or director to exert improper influence on the auditor engaged in the audit of the company's financial statements. Section 302 applies to public companies filing quarterly and annual reports with the SEC under either Section 13(a) or 15(d) of the Securities and Exchange Act of 1934. As part of each report, Section 302 requires the CEO, Chief Financial Officer (CFO), and others performing similar functions to certify each quarterly and annual report. In addition, the certifying officers must make disclosures in the quarterly and annual reports regarding the company's disclosure controls and procedures and internal controls over financial reporting.

Certification Requirements The SEC has specified the format and wording of the certification issued by the certifying officers in detail. In general, the SEC requires each certifying officer to affirm the following:

- He or she has reviewed the report.
- Based on his or her knowledge and review, the report does not contain any untrue or misleading statement of material fact.

- Based on his or her knowledge and review, the report does not omit any statements of material facts necessary to make the report fair, accurate, and full.
- Based on his or her knowledge and review, the financial statements and other financial information in the report fairly present the financial condition, results of operations, and cash flows of the company.
- He or she and the other certifying officers recognize their responsibility of establishing and maintaining effective disclosure controls and procedures.
- He or she and the other certifying officers have designed the disclosure controls and procedures to ensure that they know all necessary financial and nonfinancial information in a timely manner.
- He or she and the other certifying officers have evaluated the effectiveness of the company's disclosure controls and procedures within 90 days of the filing date and have included the results of the evaluation in the report.
- He or she and the other certifying officers have reported to the auditors and to the audit committee all significant deficiencies in the design or operation of the internal controls, any weaknesses in internal controls, and any fraud in the areas of internal controls.
- He or she and the other certifying officers have included in the report any significant changes in internal controls subsequent to the evaluation, including any corrective actions.

Internal and Disclosures Controls As part of the report certification, the certifying officers must state that they have reported any weakness in the internal controls over financial reporting. Although Section 302 requires the statement, the requirement to *actually perform* a quarterly evaluation of the effectiveness of the internal controls is in Title IV, Section 404. As part of the report certification, members of senior management also must attest to the effectiveness of the company's disclosure controls and procedures. Disclosure controls and procedures are designed to ensure that information required to be disclosed by the company in its reports to the SEC is accurately recorded, processed, summarized, and reported within the time periods required by the SEC. Disclosure controls and procedures are broader than internal controls over financial reporting. While the internal controls over financial reporting seek to ensure the accuracy and timeliness only of financial information, disclosure controls and procedures include both financial and nonfinancial information. To achieve the goal of accurate and timely SEC reports, both financial and nonfinancial information must be accumulated and communicated to the company's management in time for critical evaluation. It is especially important that members of management who are required to certify the quarterly and annual reports receive the information in a timely fashion, so they can make decisions regarding disclosure on the reports.

Audit Committee Obligations

Section 301 gives the audit committee the responsibility to appoint, compensate, and oversee the auditor, and prohibits members of the audit committee from accepting, either directly or indirectly, any compensation other than recompense directly related to their roles as members of the board of directors and its committees. Title III also requires the audit committee to develop and implement procedures to receive and resolve complaints and concerns from employees and others about accounting, internal accounting controls, and auditing matters.

Attorney Obligations

Section 307 establishes "minimum standards of professional conduct" for attorneys who provide legal services and who are in an attorney-client relationship with a public company. Both in-house attorneys and outside counsel are required to report any knowledge or evidence of a material violation of securities law or breach of fiduciary duty. The attorney first reports to the company's chief legal counsel or its CEO, but if neither responds appropriately, the attorney must then report the evidence to the audit committee, another board committee, or the board itself.

Management and Board Disincentives

Title III seeks to remove the financial incentives for misleading financial reporting through three sections (Sections 304, 305, and 306). Under Section 304, management members can no longer retain profits made from selling company stock or any bonus or other incentive-based or equity-based compensation realized during the 12-month period following the issuance of a noncompliant financial document. Section 305 gives the SEC the authority to remove any management or board member if he or she is deemed "unfit." Under Section 306, members of management and the board are now also prohibited from selling or buying any securities through the company's equity compensation plan during a pension fund blackout period.

Title IV: Enhanced Financial Disclosures

Title IV of SOX increases the financial disclosures a public company must make; prohibits personal loans to management or board members (Section 402); requires disclosure of changes in ownership by management, board members, and principal security holders (Section 403); requires management to establish and maintain adequate internal controls and procedures for financial reporting; and requires a company to disclose whether it has adopted a code of ethics for financial personnel.

Disclosure of Off-Balance-Sheet Arrangements and Non-GAAP Measures

Section 401 requires disclosure of off-balance-sheet arrangements and contractual obligations, such as long-term debt, capital lease, operating lease, or purchase obligations. Section 401 also covers publicly disclosed or released pro forma financial information, or what are termed "non-GAAP financial measures." A non-GAAP financial measure is defined as any numerical measure of a company's historical or future financial health that excludes amounts that are included in a GAAP financial measure or includes amounts that are excluded in a GAAP financial measure. An example of a non-GAAP financial measure is income before special items, such as restructuring expenses. Under the GAAP financial measure, restructuring expenses would normally be included with all other expenses that are subtracted from revenues in order to determine income. Excluding the restructuring expenses in the non-GAAP measure may mislead someone to think that the income is higher than it actually is. Section 401 currently allows the use of non-GAAP measures, but prohibits them from being misleading.

Internal Control Evaluation and Report

Under Section 404, management is required to perform quarterly evaluations of the effectiveness of the company's internal controls and procedures for financial reporting. The results of all the quarterly evaluations will be included in an internal control report that is submitted to the SEC as part of its required annual filing (Form 10-K). The annual internal control report must include the following:

- Statement of management's responsibilities to develop, implement, and maintain adequate internal controls and procedures for financial reporting
- Management's assessment of the effectiveness of the internal controls and procedures based on management's evaluation of them
- External auditor's opinion of management's evaluation of the effectiveness of internal controls and procedures

Code of Ethics Disclosure

Section 406 requires a company to disclose whether it has required the principal executive officer, principal financial officer, principal accounting officer or controller, and others performing similar functions to adopt a code of ethics. Under the SEC's definition of "code of ethics," a code of ethics must include written standards that could reasonably promote:

- Accountability for adherence to the code
- Fair, accurate, timely, full, and comprehensible disclosure in materials and documents submitted to the SEC and in other public communications

- Ethical handling of any actual or apparent conflicts of interest
- Compliance with all applicable laws, rules, and regulations
- Internal reporting of code of ethics violations

Financial Expert Disclosure

Since the effectiveness of any company's audit committee is dependent upon the committee's level of knowledge and expertise in matters related to auditing and financial issues, Section 407 requires the company to disclose annually in reports filed with the SEC whether at least one member of its audit committee has sophisticated financial expertise and can be considered an "audit financial expert." The required qualifications for being an audit financial expert include:

- Understanding of GAAP and financial statements
- Experience in preparing, auditing, analyzing, or evaluating financial statements at or beyond the level of complexity of the company's financial statements
- Understanding of internal controls and procedures for financial reporting
- Understanding of audit committee functions

Titles V, VI, VII: Analyst Conflicts of Interest, Commission Resources and Authority, Studies and Reports

Titles V, VI, and VII primarily provide details regarding security analysts, appropriations, and various studies and reports performed by the GAO and others. While these titles are important components of SOX, they are not directly relevant to the behavior of public companies, nor do they apply to nonprofits. These titles will thus not be discussed in any detail.

Title VIII: Corporate and Criminal Fraud Accountability Act of 2002

Title VIII, also referred to as the Corporate and Criminal Fraud Accountability Act of 2002, creates criminal penalties for fraud and document destruction, provides protection for whistleblowers who provide evidence of fraud, specifies that debts incurred in violation of securities fraud laws are nondischargeable (Section 803), extends the statute of limitations on securities fraud claims, and creates a new crime for defrauding shareholders of publicly traded companies (Section 807).

Document Destruction

Section 802 amends the federal obstruction of justice statute. It is now a felony to "knowingly" destroy, conceal, cover up, add to, or falsify documents or records in order to impede or obstruct any federal investigation or bankruptcy proceeding. While

destruction of documents with intent to obstruct a federal investigation was already a criminal offense under the existing statute, the statute only applied to ongoing investigations. The new offense also covers contemplated investigations and provides for the imposition of fines, imprisonment for up to 20 years, or both, for the violation of the statute.

Preservation of Audit Materials

Auditors can also be charged with a felony if they fail to retain all audit and review work papers and materials for a period of five years from the end of the fiscal year in which the audit was conducted. Section 802 provides for the imposition of fines, imprisonment for up to ten years, or both, for the violation of the statute.

Whistleblower Protection

Under Section 806, employees of public companies and accounting firms who disclose private company or firm information as evidence of accounting or auditing violations or fraud to a supervisor, federal regulator, law enforcement agency, or member of Congress are extended whistleblower protection.

Under whistleblower protection, it is unlawful for the employer to discriminate against the employee in any manner if that employee engaged in the protected activity. Discrimination includes actions such as discharge, demotion, suspension, threats or harassment, blacklisting, and disciplinary actions. Under this section, whistleblowers are granted a remedy of special damages and attorney's fees. The PCAOB has established the Center for Enforcement Tips, Complaints, and Other Information to provide employees with an easy avenue for submitting evidence to the PCAOB (PCAOB, 2003).

Extended Statute of Limitations

The statute of limitations for claims of securities fraud is extended under Section 804. Previously, the statute of limitations was three years from the time the fraud was committed, or one year after the fraud was discovered. Section 804 extended the limitations to the earlier of five years from the time the fraud was committed, or two years after the fraud was discovered.

Title IX: White-Collar Crime Penalty Enhancements Act of 2002

Title IX, also referred to as the White-Collar Crime Penalty Enhancements Act of 2002, creates or enhances penalties for a variety of "white-collar" crimes. Section 902 extends the penalties for *actually committing* the crime or violation to cover individuals who only *attempt or conspire to commit* the crime or violation. Section 903 increases the penalties for wire and mail fraud from five years to 20 years; Section 904 increases the fine and penalties for violations of Section 501 of the Employee Retirement and

Security Act of 1974; and Section 905 requires the U.S. Sentencing Commission to review the Federal Sentencing Guidelines to ascertain that they reflect the serious nature of securities and accounting fraud.

Criminal Penalties under Section 906

Section 906 is one the most controversial sections of Title IX, as it creates criminal penalties for a public company's CEO and the CFO (or equivalent) in regard to certification of SEC quarterly and annual reports. Under Section 906, the CEO and CFO must certify that the quarterly and annual reports, which contain the financial statements and are submitted to the SEC as required under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, comply fully with the provisions of the Securities Exchange Act. In addition, they must certify that the reports fairly present the operations and financial condition of the company. This certification is in addition to the certification that is required under Title III, Section 302. The maximum penalties for willful and knowing violations under Section 906 are a fine of not more that $5,000,000, imprisonment of up to 20 years, or both.

Title X: Corporate Tax Returns

Title X contains only one section, Section 1001, and does not require any action by any party. Section 1001 expresses Congress' belief that the corporation's CEO should sign the Federal income tax return of a corporation.

Title XI: Corporate Fraud Accountability Act of 2002

Title XI, also referred to as the Corporate Fraud Accountability Act of 2002, creates new crimes and penalties acts, and gives the SEC authority to institute additional fraud disincentives. Two sections of Title XI, Sections 1102 and 1107, apply to *all* corporations, including nonprofits.

SEC Disincentives

Two sections, Sections 1103 and 1105, give the SEC authority to institute new fraud disincentives. During the course of an investigation of possible violations of securities law, Section 1103 gives the SEC the authority to petition a Federal court to freeze the payment of any extraordinary payment to any director, officer, partner, controlling person, agent, or employee of a company for up to 45 days. This section gives the SEC the authority to prohibit, either conditionally or unconditionally, and permanently bar a person from serving as an officer or director of a public company if the person has committed securities fraud.

New Crimes and Penalties

Under Section 1104, Congress requests the U.S. Sentencing Commission to review the Federal Sentencing Guidelines and to consider changes that would enhance the sentences of officers and directors of public companies who commit acts of fraud and related offenses. Section 1106 increased the criminal penalties, both fines and prison terms, for violations of the Securities Exchange Act of 1934.

Provisions that Apply to Nonprofits

Section 1102 Section 1102 defines the tampering of any record or document to impair the object's integrity for use in an official proceeding as a crime. This section also makes obstructing, influencing, or impeding any official proceeding, or attempts to do so, a crime. The penalties for violation are a fine, imprisonment of up to 20 years, or both.

Section 1107 Section 1107 makes it a crime and imposes criminal penalties for any organization to retaliate or take any harmful action against any person who has provided any truthful information regarding the commission of any Federal offense to a law enforcement officer. This applies to an *actual* commission of an offense, and to the *possible* commission of an offense. A reasonable belief or suspicion that an offense has been committed is sufficient to create protection for the employee.

Under this section, "any harmful action" includes interference with the employment or livelihood of the employee. This thus prohibits the organization from firing, demoting, suspending, harassing, refusing to promote, or reprimanding the employee. The penalties for violations include a fine, or imprisonment up to 10 years, or both.

Factors that Drove the Swift Passage of SOX

After reviewing the legislative and regulatory content of SOX, it should be readily apparent that SOX is a major piece of legislation that brought about substantive and sweeping changes in securities law. What prompted such swift passage of such a far-reaching piece of legislation? Most public policymaking in the United States is characterized by modest modification in policy, a process aptly described as one of incrementalism (Lindblom, 1969). What factors made SOX different?

Corporate Scandals

One of the drivers of the swift passage of the legislation was the tidal wave of corporate and accounting scandals that rocked the U.S. financial markets in 2000, 2001, and 2002. The SEC, the Department of Justice, the Federal Energy Regulatory Commission,

the Federal Bureau of Investigation, and U.S. Attorney Offices in New York, Denver, and Houston were all investigating a number of publicly held companies for falsifying financial statements, using questionable accounting procedures, mismanagement of assets, or otherwise misleading their shareholders and the public about their financial standing. A partial listing of the organizations under investigation included Adelphia Communications, AOL, Bristol-Myers Squibb, CMS Energy, Dynergy, Duke Energy, Enron, Global Crossing, Halliburton, Homestore.com, IMClone Systems, Mirant, Peregrine Systems, Qwest Communications International, Reliant Energy, WorldCom, and Xerox (Patsuris, 2002). The allegations included:

- **Adelphia Communications**: Gave the founding Rigas family and other executives $3.1 billion in off-the-books loans and hid the loans
- **AOL**: Inflated sales by treating barter deals and advertisements sold on behalf of others as revenues
- **Bristol-Myers Squibb**: Inflated its 2001 revenues by forcing wholesalers to accept more inventory than needed
- **CMS Energy**: Boosted trading volumes and revenues through "round-trip" trades
- **Duke Energy**: Boosted trading volumes and revenues through "round-trip" trades
- **Dynergy**: Boosted trading volumes and revenues through "round-trip" trades
- **Enron**: Boosted profits and hid debts by improperly using off-the-books partnerships, manipulated the California and Texas energy markets, and bribed foreign governments to win contracts abroad
- **Global Crossing**: Inflated revenues by engaging in network capacity "swaps" with other carriers, and shredded documents related to accounting practices
- **Halliburton**: Recorded $100 million in annual construction cost overruns before clients had agreed to pay for them
- **Homestore.com**: Inflated sales and revenues by recording barter transactions as revenue
- **ImClone**: CEO Sam Waksal engaged in insider training and improperly used ImClone assets as collateral for a personal bank loan of $44 million
- **Mirant**: Inflated revenues by $1.1 billion
- **Peregrine Systems**: Inflated sales and revenues by improperly recognizing revenues from third-party resellers
- **Qwest Communications International**: Inflated revenues by engaging in network capacity "swaps" with other carriers
- **Reliant Energy**: Boosted trading volumes and revenues through "round-trip" trades

- **WorldCom**: Recorded $3.8 billion in operating expenses as capital expenses and gave founder Bernard Ebbers $400 million in off-the-books loans
- **Xerox**: Over a five-year period, boosted income by $1.5 billion

Auditor Scandals

Certified public accounting firms also had their share of high-profile scandals. If an auditor from a public accounting firm examines the financial statements of public companies and gives an unqualified opinion regarding those statements, the shareholders and the public should have increased assurance that the statements were prepared in accordance with GAAP, that GAAP was applied on a consistent basis, and that the statements included all the information necessary to fairly present the company's financial standing. Since public companies registered with the SEC are required to have their financial statements audited by an external auditor, how were the public companies able to produce such misleading financial statements?

There are a number of reasons why the auditor's opinion does not accurately represent the condition of the financial statements. In some cases, auditors simply make errors. In other cases, however, an auditor's opinion may be biased, not objective, and not independent of the organization being audited. The auditor may have a financial incentive to misrepresent the fairness of the financial statements. If, for example, the firm performing the audit is also receiving substantial compensation for providing consulting, tax work, or other services, the accounting firm has a financial incentive to maintain a good relationship with the company being audited. The desire to maintain the relationship—and the compensation—may bias the audit report to reflect a more positive financial position than exists. Biased auditor reports can also occur if the relationship between the management of the company being audited and the auditor is too "cozy." The loyalty of the auditor may lie with management instead of with the shareholders, and the auditor's evaluation of the statements may be biased by that loyalty.

Arthur Andersen LLP and Enron

As discussed previously, one of the public companies under investigation was Enron. For several years, Enron, an energy company, participated in a number of partnership transactions that lost the company a substantial amount of money. In 2001, Enron reported that it had failed to follow GAAP in its financial statements for 1997 through 2001 by excluding these unprofitable transactions. In these erroneous financial statements, the organization reported large profits when, in fact, it had lost a total of $586 million during those years. Neither internal nor external controls detected the financial losses disguised as profits. The revelation of the erroneous financial reporting led to a collapse in the price of Enron stock. The price of Enron stock fell from $83 per share in December 2000 to less than $1 per share in December 2001. However, some of Enron's managers made millions of dollars by selling their company stock before its

price plummeted. Other investors experienced substantial losses, including Enron employees who had invested a large portion of their retirement portfolios in Enron stock (Securities and Exchange Commission v. Timothy A. DeSpain, 2005; Securities and Exchange Commission v. Richard A. Causey, Jeffery K. Skilling, and Kenneth L. Lay, 2004).

The certified accounting firm of Arthur Andersen LLP, which had been one of the largest accounting firms in the world, served as Enron's auditor throughout the years of erroneous statements. The firm allegedly "overlooked" Enron's questionable accounting practices since it was making a large amount of money for providing Enron with consulting services and did not want to lose the consulting business. The firm was indicted by the U.S. Department of Justice, and in June 2002 a jury convicted the firm of obstructing justice by shredding Enron-related documents requested by the SEC. U.S. District Judge Melinda Harmon sentenced the firm to a $500,000 fine and five years' probation. The conviction, however, essentially decimated the powerful Big Five firm, and it lost most of its clients.

The 5th U.S. Circuit Court of Appeals affirmed the jury verdict, but on May 31, 2005, the U.S. Supreme Court overturned accounting firm Arthur Andersen's obstruction of justice conviction. The conviction, according to Supreme Court justices, was improper because the jury instructions during the trial were too broad and vague, and jurors couldn't correctly determine whether the company actually committed the crime. The reversal of the firm's criminal conviction is thus based entirely on a trial technicality: improper jury instructions (Arthur Anderson LLP v. United States, 2005).

Although the relationship between Enron and Arthur Andersen LLP is a dramatic example of failure in the auditing process, there were a number of other accounting firms whose auditing practices and relationships with auditing clients were under question. Examples include Deloitte Touche and Adelphia, Ernst & Young and AOL, KPMG and Xerox, and PricewaterhouseCoopers and Bristol-Myers Squibb.

Response of President Bush and the 107th Congress

As more and more scandals came to light, the public's confidence in the capital markets and in the integrity of corporate financial statements was shaken. In part in response to the lack of public confidence and the downward plummet in the stock market, both President George W. Bush and the 107th Congress responded.

On March 7, 2002, the President announced his "Ten-Point Plan to Improve Corporate Responsibility and Protect America's Shareholders," based on three core principles: information accuracy and accessibility, management accountability, and auditor independence. The points of the plan were:

- Each investor should have quarterly access to the information needed to judge a firm's financial performance, condition, and risks.

- Each investor should have prompt access to critical information.
- CEOs should personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures, including their financial statements.
- CEOs or other officers should not be allowed to profit from erroneous financial statements.
- CEOs or other officers who clearly abuse their power should lose their right to serve in any corporate leadership positions.
- Corporate leaders should be required to tell the public promptly whenever they buy or sell company stock for personal gain.
- Investors should have complete confidence in the independence and integrity of companies' auditors.
- An independent regulatory board should ensure that the accounting profession is held to the highest ethical standards.
- The authors of accounting standards must be responsive to the needs of investors.
- Firms' accounting systems should be compared with best practices, not simply minimum standards.

On July 9, 2002, President Bush issued Executive Order 1371, which established the Corporate Fraud Task Force within the Department of Justice. Deputy Attorney General Larry Thompson heads the task force. The task force includes representatives from seven U.S. Attorney Offices, the FBI, and SEC to oversee the investigation and prosecution of financial fraud, accounting fraud, and other corporate criminal activity, and to provide enhanced interagency coordination of regulatory and criminal investigations. Former Deputy Attorney General Thompson explained the goal of the President's Corporate Fraud Task Force, "As we establish with ever increasing certainty the prospect that corporate criminals will lose both their fortunes and their liberty, we will have gone a long way to restoring the integrity of the market and the confidence of the nation." (Office of the Press Secretary, 2002.)

The Congress' response was the relatively quick passage of SOX, a substantial piece of legislation. It took less than six months (from February 14 to July 15) for both chambers of Congress to pass the bill and send it to President Bush for signature. The President did so on July 30, 2002.

Implications of SOX for Nonprofits

The nonprofit sector has recently experienced its own recent scandals of perceived wrongdoing and fiscal mismanagement. For example, the Nature Conservancy, United Way, American Red Cross, Whitney Museum of American Art, Foundation for New Era Philanthropy, and Feed the Children have all received substantial unfavorable

media coverage of their apparent failures in accountability and adherence to mission (Bothwell, 2001). Incidents such as these have cast the nonprofit sector in an unfavorable light, and have damaged the public's trust in the integrity and the public benefit of nonprofits. While it is true that the majority of the SOX provisions currently only apply to publicly traded corporations and not to nonprofit organizations, nonprofits could benefit operationally from adopting some of the SOX provisions as "best practices." In addition, voluntarily adhering to the SOX standards would create greater credibility and the ability to recruit high quality board members, and attract the favorable attention of major donors, foundations, and other funding sources.

Pressure for Enhanced Nonprofit Regulation

If the nonprofit sector wants to obtain its current level of relative self-regulation, nonprofit leaders need to make a visible effort to improve organizational governance and accountability. If this does not occur, nonprofits may come under additional unwanted regulation by the government. Some members of Congress and state attorney generals have already suggested that additional provisions of SOX should be applied to nonprofits, the State of California recently passed legislation that imposes many SOX-like provisions on California nonprofits, the IRS has suggested several proposals for increased oversight and enforcement, and some nonprofit groups are developing their own set of regulatory proposals.

Senate Finance Committee

In June 2004, the Senate Finance Committee released its staff draft "White Paper" that contained a number of proposals to impose under federal law SOX-type governance requirements on the nonprofit sector (OMB Watch, 2004). The proposals were based, in part, on the findings from the June 22 hearing conducted by the State Finance Committee—"Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities." Among the proposals were the following:

- Five-year review of tax-exempt status by the Internal Revenue Service (IRS)
- Apply private foundation self-dealing rules to public charities
- Limit amounts paid for travel, meals, and accommodations
- Establish standards for acquisition and/or conversion of a nonprofit
- Improve quality and scope of Form 990 and financial statements
- Require CEO (or equivalent) to sign a declaration under penalties of perjury confirming the existence of processes and procedures ensuring that the nonprofit's Federal and state tax returns comply with the Internal Revenue Code to provide reasonable assurance of the accuracy and completeness of all material aspects of the tax return

- Establish penalties for failure to file a complete and accurate Form 990
- Establish penalty for failure to file a timely Form 990
- Require electronic filing of tax returns and financial statements
- Establish IRS standards for Form 990
- Require disclosure of performance goals, activities, and expenses in Form 990 and financial statements
- Require disclosure of investments
- Enforce governing board roles of audit and oversight
- Enforce governing board composition, terms, and liability

Nonprofit Integrity Act of 2004

California's Nonprofit Integrity Act of 2004 (Larsen, 2004) imposes many of the provisions of SOX on nonprofits operating in California. Senator Byron Sher (D–Stanford) and the bill's sponsor, Attorney General Bill Lockyer, have stated that the purpose of the legislation is to minimize nonprofit accounting scandals and incidents of abuse by some commercial fundraising outfits.

The Nonprofit Integrity Act is not the sweeping, overarching legislation that SOX is, but it is quite significant in its mandates. The new law fairly breaks into two subjects—financial reporting and governance, and charitable fundraising regulation. Some of the key provisions of the act are:

For nonprofits with gross revenues of $2 million or more, the nonprofit must:

- Conduct an external annual audit of financial statements, using GAAP
- Have an independent auditor
- Make public disclosure of audited financial statements
- Board of directors must establish an audit committee
- Board of directors must review and approve the compensation of the CEO and CFO

For all nonprofits, regardless of size, which are registered with the Attorney General, the nonprofit must:

- Make public disclosure of financial statements if they are audited
- Register with the Registry of Charitable Trusts within 30 days, changed from 6 months
- Provide notice to the Attorney General of commencement of any solicitation by a commercial fundraiser ten days before the start of the campaign
- Have all contracts with commercial fundraisers signed by an official of the nonprofit and contain a "boilerplate" of provisions

- Exert control over and assume responsibility for all fundraising activities
- Void contracts with commercial fundraisers who have not registered with the Attorney General's Registry of Charitable Trusts
- Cancel contracts with commercial fundraisers without liability if the fundraisers make material misrepresentations during solicitation, or are found to have been convicted of a crime arising from fundraising activities

Commissioner of the Internal Revenue Service—Mark W. Everson

On April 5, 2005, the Commissioner of the Internal Revenue Service, Mark W. Everson, presented a written statement before the U.S. Senate Committee on Finance hearing on "Charities and Charitable Giving: Proposals for Reform." In his statement, Everson pointed out some of the IRS' concerns regarding tax-exempt charities:

- Terrorist financing by charities
- Overcompensation of nonprofit management and staff
- Overvaluation of noncash donations
- Misuse of donor-advised fund arrangements
- Excessive political activities
- Misuse of tax shelters

In the statement, Everson requested that Congress increase IRS funding in order for it to exert more oversight over the nonprofit sector.

Panel on the Nonprofit Sector

On June 22, 2005, the Panel on the Nonprofit Sector, convened by Washington, D.C.-based Independent Sector, gave its recommendations to the U.S. Senate Finance Committee (Panel on the Nonprofit Sector, 2005; Jones, 2005). The report was in response to federal proposals aimed at improving charitable governance and accountability. The 116-page final report provided 120 suggested actions for the IRS, legislators, and charitable organizations. Some of the changes suggested to the IRS were:

- Charities with at least $2 million in total revenue and filing a Form 990 or Form 990PF would be legally required to conduct a yearly financial audit.
- Organizations with $500,000 to $2 million in total revenue would be required to have an independent public accountant review financial statements.
- Charities with less than $25,000 in revenue would face automatic suspension of tax-exempt status if they fail to file an annual notice with the IRS for three consecutive years.

- Require CEOs, CFOs, or the highest-ranking officer to sign tax and information forms.
- Suspend tax-exempt status of organizations that fail to comply with federal filing requirements for two or more consecutive years.
- Extend penalties imposed on individual and corporate tax preparers for omission or misrepresentation of information, disregard of rules and regulations to preparers of Form 990s.
- Move forward with requiring e-filing of Form 990s and allow for separate attachments.
- Coordinate federal e-filing efforts with states.
- Require e-filing of applications for tax-exempt status.

Some of the changes suggested for nonprofits were:

- Adopt and enforce conflict of interest policies.
- Include people with some financial literacy on its boards of directors.
- Create whistleblower protection policies.

Some of the changes suggested for Congress were:

- Define donor advised funds.
- Prohibit charities from making grants to private nonoperating foundations from donor advised funds.
- Enact minimum activity rules for donor advised funds.
- Prevent public charities from knowingly using donor advised funds to reimburse donors/advisers for expenses incurred by them in an advisory capacity or making grants to donors/advisers and related parties.
- Increase funding for IRS enforcement of nonprofits.

Conclusion

It should be clear that the current legislative environment is emphasizing greater accountability for both the private and nonprofit sectors of the economy. It should also be apparent that pressures are mounting for more SOX-like legislation directed at the nonprofit sector. While it is true that the majority of the SOX provisions currently only apply to publicly traded corporations and not to nonprofit organizations, nonprofits could benefit operationally from adopting some of the SOX provisions as "best practices." In addition, voluntarily adhering to the SOX standards would create greater credibility and the ability to recruit high-quality board members, and attract the favorable attention of major donors, foundations, and other funding sources.

Worksheet: SOX and Relevance to Nonprofit Operations

As discussed throughout this chapter, SOX and SOX-influenced legislation does have major implications for nonprofits. Exhibit 1.3, *SOX and Relevance to Nonprofit Operations*, will help a nonprofit develop a deeper understanding of those implications. For each title of SOX, review the provisions described in the chapter and develop ways in which those provisions have relevance for the nonprofit sector. For example, Title I establishes the PCAOB, which oversees public companies. Should the nonprofit sector have a similar overseeing body? Why or why not? Section 404 of SOX requires management in public companies to conduct periodic evaluation of the company's internal control system. Could this be a "best practice" for nonprofits? Why or why not?

Exhibit 1.3 WORKSHEET: SOX AND RELEVANCE TO NONPROFIT OPERATIONS

SOX Titles and Sections	Relevance to Nonprofit Operations
I. Public Company Accounting Oversight Board	
101: Establishment, administrative provision	
102: Registration with the Board	
103: Auditing, quality control, and independent standards and rules	
104: Inspections of registered public accounting firms	
105: Investigations and disciplinary proceedings	
106: Foreign public accounting firms	
107: Commission oversight of the Board	
108: Accounting standards	
109: Funding	
II. Auditor Independence	
201: Services outside the scope of practice of auditors	
202: Preapproval requirements	
203: Audit partner rotation	
204: Auditor reports to audit committees	
205: Conforming amendments	
206: Conflicts of interest	
207: Study of mandatory rotation of registered public accounting firms	
208: Commission authority	
209: Considerations by appropriate State regulatory authorities	
III. Corporate Responsibility	
301: Public company audit committees	
302: Corporate responsibility for financial reports	
303: Improper influence on conduct of audits	
304: Forfeiture of certain bonuses and profits	
305: Officer and director bars and penalties	
306: Insider trades during pension fund blackout periods	
307: Rules of professional responsibility for attorneys	
308: Fair funds for investors	

SOX Titles and Sections	Relevance to Nonprofit Operations
IV. Enhanced Financial Disclosures 401: Disclosures in periodic reports 402: Enhanced conflict of interest provisions 403: Disclosure of transactions involving management and principal stockholders 404: Management assessment of internal controls 405: Exemption 406: Code of ethics for senior financial officers 407: Disclosure of audit committee financial expert 408: Enhanced review of periodic disclosures by issuers 409: Real-time issuer disclosures	
V. Analyst Conflicts of Interest 501: Treatment of security analysts by registered securities associations and national security exchanges	
VI. Commission Resources and Authority 601: Authorization of appropriations 602: Appearance and practice before the Commission 603: Federal court authority to impose penny stock bars 604: Qualifications of associated persons of brokers and dealers	
VII. Studies and Reports 701: GAO study and report regarding consolidation of public accounting firms 702: Commission study and report regarding credit rating agencies 703: Study and report on violators and violations 704: Study of enforcement actions 705: Study of investment banks	
VIII. Corporate and Criminal Fraud Accountability 801: Short title 802: Criminal penalties for altering documents 803: Debts nondischargeable if incurred in violation of securities fraud laws 804: Statute of limitations for securities fraud 805: Review of Federal sentencing guidelines for obstruction of justice and extensive criminal fraud 806: Protection for employees of publicly traded companies who provide evidence of fraud 807: Criminal penalties for defrauding shareholders of publicly traded companies	
IX. White Collar Crime Penalty 901: Short title 902: Attempts and conspiracies to commit criminal fraud offenses 903: Criminal penalties for mail and wire fraud 904: Criminal penalties for violations of the Employee Retirement Income Security Act of 1974 905: Amendment to sentencing guidelines relating to certain white-collar offenses 906: Corporate responsibility for financial reports	

(*continues*)

Exhibit 1.3 worksheet: SOX and relevance to nonprofit operations (continued)

SOX Titles and Sections	Relevance to Nonprofit Operations
X. Corporate Tax Returns	
1001: Sense of the Senate regarding the signing of corporate tax returns by Chief Executive Officers	
XI. Corporate Fraud and Accountability	
1101: Short title	
1102: Tampering with a record or otherwise impeding an official proceeding	
1103: Temporary freeze authority for the Securities and Exchange Commission	
1104: Amendment to the Federal Sentencing Guidelines	
1105: Authority of the Commission to prohibit persons from serving as officers or directors	
1106: Increased criminal penalties under Securities Exchange Act of 1934	
1107: Retaliation against informants	