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Not-for-Profit Executive Forum

November 16, 2022

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Top Challenges Facing Not-For-Profits Today

NOVEMBER 16, 2022

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Amy West is currently the Executive Vice President and Chief Financial Officer of AHRC New York City ("AHRC"). AHRC is an organization that provides critical services to people with intellectual and developmental disabilities and their families. In her role Amy oversees the wide array of financial and administrative functions, strategic financial initiatives, real property and special projects that enable AHRC to fulfill its mission. Amy has direct responsibility for AHRC's operating budget of over $300 Million and manages a staff of ninety.

Prior to joining AHRC, Amy served for eight years as the Director of Finance of the Solomon R. Guggenheim Foundation. Amy also held the position of Vice President of Finance and Budget at the United States Fund for UNICEF and worked as an auditor for Ernst & Young LLP specializing in the healthcare and not-for-profit industries. She began her career as the Coordinator of Fiscal Operations for the New York Public Library.

Amy graduated Summa Cum Laude from Hunter College with a Bachelor of Science Degree in Accounting. She is the Chair of the AICPA's Not-For-Profit Industry Conference and serves on the AICPA's Not-For-Profit Advisory Council. In addition, she is Chair of the NYSSCPA's Nonprofit Committee and is a member of Nonprofit New York's Excellence Awards Selection Committee.

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Top Challenges

- Workforce
- Inflation
- Funding
- Outsourcing
- Role of the Chief Financial Officer

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Top Challenges

- Fraud Prevention
- Cybersecurity
- Automation and Technology
  - Embracing Big Data
- Compliance

Top Challenges

- Innovation
  - Staying relevant and finding new audiences
  - What worked yesterday won’t work today
- Accelerated Post-Pandemic Growth
- Building Future Boards
- DEIB and ESG Initiatives

Workforce

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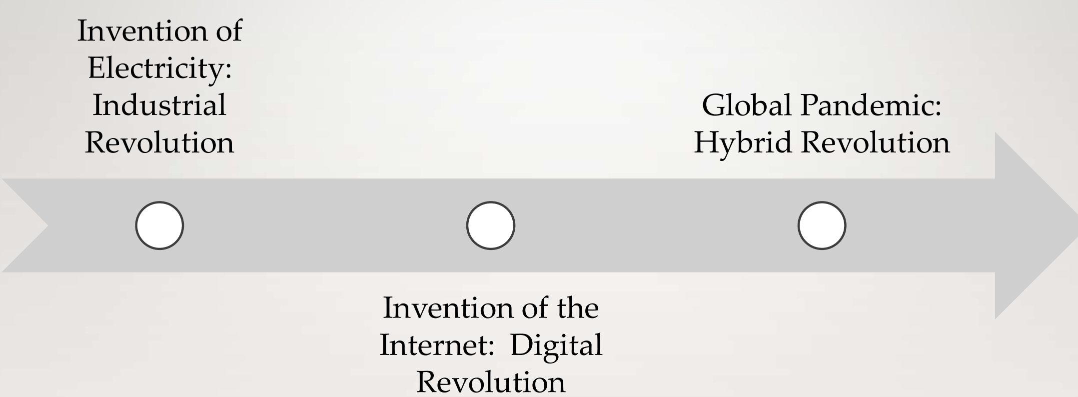
Workforce Revolution



Adapted from C-Suite: Redesigning Work for a Hybrid Future, Gartner, August 2021

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Staffing Inequities

- Remote workforce model
  - *More than 60% of jobs can't be done at home
  - Gap between those employees whose jobs can be conducted anywhere by computer and employees whose roles require human contact
  - Creates an "us" versus "them" culture
- Wages
- Unconscious bias

*https://www.bloomberg.com/news/articles/2021-01-27/work-from-home-remote-work-could-advance-or-set-back-equality

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Burnout

- *A survey from the careers site Indeed conducted during the spring of 2021 found more than half of workers said they felt burned out
- The Big Blur Phenomenon
- It's "Busy Season" all the time

- https://www.indeed.com/lead/preventing-employee-burnout-report

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Recruitment and Retention

- *Between April 1 and September 2021, more than 24 Million American employees left their jobs, an all-time record.
- Current market conditions make it nearly impossible to recruit and retain staff

*Job Openings and Labor Turnover Survey, U.S. Bureau of Labor Statistics, assesd December 2021, www.bls.gov

MIT Survey Reveals Top Predictors of Employee Turnover Relative to Salary

- Toxic corporate culture (10.4 times)
- Job insecurity and reorganization (3.5 times)
- High levels of innovation (3.2 times)
- Failure to recognize employee performance (2.9 times)
- Poor response to Covid-19 (1.8 times)

* https://sloanreview.mit.edu/article/toxic-culture-is-driving-the-great-resignation/

Causes of a Toxic Workplace Culture

- Employees often hold their managers responsible
- According to SHRM:
  - 58% of employees who quit their jobs to workplace culture state that their managers are the main reason they left
  - 3 in 10 employees say their manager doesn't encourage a culture of open communication
  - 1 in 3 employees say their manager doesn't know how to lead them

The Cost of Excessive Turnover

The cost of staff turnover due to workplace culture exceeded $223 Billion over the past five years*

***The High Cost of a Toxic Workplace Culture: How Culture Impacts the Workforce-and the Bottom Line (https://pmq.shrm.org/wp-content/uploads/2020/07/SHRM-Culture-Report_2019-1.pdf)**

Addressing Workplace Challenges

- Competitive salary and benefits
  - Offer reasonable salaries
  - Provide wide variety of benefits
  - Focus on total well-being
  - Re-examine pay ranges and hire-in rates

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Addressing Workplace Challenges

- Communication, empathy and connection
  - Use an individualized versus one size fits all approach
  - Leaders need to ensure that they are sensitive to employee needs
  - Lead by example and with empathy
  - Live by core values
  - Provide a forum for staff to connect in person
  - Ask staff how they are doing

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Addressing Workplace Challenges

- Showcase organizational brand and mission
  - Realize Glassdoor really matters
  - Revamp job descriptions into marketing tools
  - Perform an honest assessment of workplace culture
  - Rethink recruitment strategies
    - Hire for cultural contribution
    - Institute Referral Programs

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Addressing Workplace Challenges

- Coach and train managers
- Actively seek employee input
- Prioritization
- Re-evaluate the way things are done
- Automation and process improvement

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Addressing Workplace Challenges

- Offer greater flexibility
- Invest in staff
  - Professional development
  - Mentoring program
  - Internal advancement
  - Special projects
- Make work a safe place

Addressing Workplace Challenges

- Evaluation and Feedback
  - Focus on work outcomes rather activity metrics
  - Avoid "Productivity Paranoia" and proximity bias

Addressing Workplace Challenges

- Embrace diversity
  - One study suggests that 80% of workers say they want to work for a company that values Diversity, Equity, Inclusion and Belonging yet still roughly 80% of companies are just going through the motions
  - Recognize everyone is unique with different cultures, personalities, strengths and weaknesses
  - Inclusive workforce allows innovation to flourish
  - It also boosts revenue, attracts talent, appeals to investors and reduces turnover

QUESTIONS?

Not-for-Profit Executive Forum
Accounting for Leases

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Partner
Not-for-Profit Services Group
November 16, 2022

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Agenda

1. Background on ASU 2016-02 (Topic 842)
2. Accounting for Leases & Calculation of Values
3. Presentation & Disclosure Example
4. Adoption Considerations & Lessons Learned

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Background

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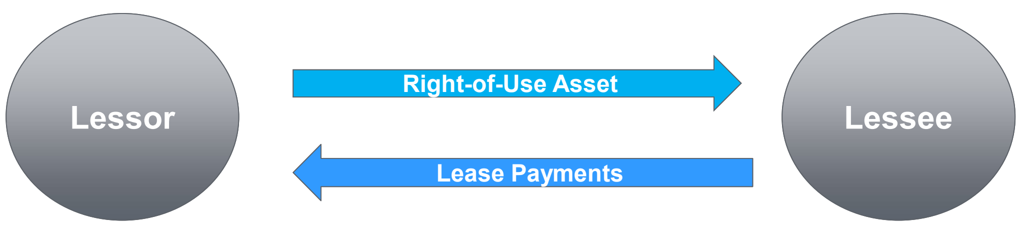
Background on ASU 2016-02

- Lease guidance has had limited changes since FASB 13 issued in November 1976
- Decade-long joint project between FASB & IASB
- Issued February 2016
- Codified into ASC 8431 (superseding ASC 840)
- Lessor accounting remained relatively unchanged
- FASB voted in July 2019 to extend application for nonpublic organizations by one year
- FASB provided COVID-19 relief & provided an additional year to apply the standard if you have not yet applied the standard (including NFP conduit bond obligors)

ASU 2018-11: Transition Options

Lease Accounting	FY 20X1 (Comparative Period)	FY 20X2 (Year of Initial Adoption)
Original transition method provided in ASU 2016-02	842	842
Additional transition method provided in ASU 2018-11	840	842

Leases (ASU 2016-02, Topic 842)



A lease contract conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration.

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Comparison of Lessee Accounting Models

Finance Lease

- **Balance Sheet**
  - Right-of-Use (ROU Asset)
  - Lease liability
- **Income Statement**
  - Interest expense (on lease liability)
  - Amortization expense (on ROU asset)
- **Cash Flow**
  - Cash paid for principal payments (financing activities)
  - Cash paid for interest payments & for variable lease payments (operating activities)

Operating Lease

- **Balance Sheet**
  - Right-of-Use (ROU Asset)
  - Lease liability
- **Income Statement**
  - Lease/rent expense (straight line)
- **Cash Flow**
  - Cash paid for lease payments (generally operating)

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Right to Control the Use of the Asset

A lease contract conveys the right to control the use of the identified asset for a specified period of time

A customer controls an identified asset when the customer has both of the following:

Right to direct its use
The right to direct how & for what purpose the asset is used, including the right to change how & for what purpose the asset is used

Right to obtain substantially all economic benefits from its use
By having exclusive use of the asset throughout the period

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Short-Term Leases

Leases at commencement date have a term of 12 months or less & do not include option to purchase underlying asset that the lessee is reasonably certain to exercise.

This policy election must be disclosed in the financial statements.

Warning: The existence of lease extensions & the likelihood of extending the arrangement must be considered in determining the term.

Entities can make a formal policy election to not recognize short-term leases on the balance sheet

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Finance Lease Criteria (Similar to Capital Lease)

1. Ownership of asset transfers to lessee by end of lease term
2. Lessee has purchase option that is reasonably certain to be exercised
3. Lease term is for major part of economic life of asset (n/a for leases that commence “at or near the end” of the underlying asset’s economic life, e.g. in the final 25 percent of an asset’s economic life
4. PV of minimum lease payments amounts to at least substantially all of fair value of leased asset
5. **New**: Underlying asset is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term

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Accounting for Leases & Calculation of Values

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Lessee Model – Initial Measurement

Lease liability (obligation to make the lease payments)

- Measured at the present value of the future minimum lease payments

Right-of-use asset

- Lease liability + initial direct cost + lease prepayments – lease incentives received

Discount rate

- Use the rate charged by the lessor if known
- The incremental borrowing rate
- All private companies & NFPs may elect to use the risk-free rate rather then its borrowing rate (& can use both by class of underlying asset)
- Rate as of the implementation date for the remaining lease term (no need to go back in time)

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Lease Example #1 Details

Finance Lease

- Six-year lease
- No renewal options
- Lease payments $40,000 paid EOY
- Includes 9% interest rate
- Lease classifies as a finance lease

In this simplified example, the lease liability & the right-of-use asset are both $179,437 (present value of six payments of $40,000 each, at a discount rate of 9%)

The journal entry would be

Dr.	Right-of-use asset – finance lease	$179,437
	Cr. Lease liability – finance lease	($179,437)

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Lessee Model – Subsequent Accounting

Annual expense recognition & subsequent amortization of ROU asset depends on lease classification

- Finance lease
  - Unwind liability using the effective interest method
  - Front-loaded expense pattern similar to capital leases under ASC 840 with interest & amortization recognized separately
  - Interest determined on the lease liability in each period during the lease term as the amount that produces a constant periodic discount rate
  - ROU asset generally amortized on a straight-line basis

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Lease Example #1

Finance Lease

In this simplified example, if the arrangement is determined to be a ***finance lease***, the lessee recognizes both amortization expense & interest expense, with higher expense in the initial years

Finance Lease						
	Payments	Asset	Liability	Amort. Expense	Interest Expense	Total Expense
Commencement		179,437	179,437			
Year 1	40,000	149,531	155,586	29,906	16,149	46,055
Year 2	40,000	119,625	129,589	29,906	14,003	43,909
Year 3	40,000	89,719	101,252	29,906	11,663	41,569
Year 4	40,000	59,812	70,365	29,906	9,113	39,019
Year 5	40,000	29,906	36,698	29,906	6,333	36,239
Year 6	40,000	0	0	29,906	3,302	33,208
Total	240,000			179,437	60,563	240,000

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Simplified Example (Continued)

Beginning Balances – Year 1 – Finance Lease
- Right-of-use asset – finance lease $179,437
- Lease liability – finance lease ($179,437)

Year 1 Activity – Finance Lease
To record lease payment & year 1 journal entries
Dr. Lease liability – finance lease $23,851
Dr. Interest expense $16,149
Cr. Accounts Payable (or cash) ($40,000)
Dr. Amortization expense $29,906
Cr. Right-of-use asset – finance lease ($29,906)

Ending Balances – Year 1 – Finance Lease
- Right-of-use asset – finance lease $149,531
- Lease liability – finance lease ($155,586)

- Expense for the year $46,055

Journal Entries
Lease Example #1

Finance Lease

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Operating Lease

Lease Example #2 Details

- Six-year lease
- No renewal options
- Lease payments $40,000 paid EOY
- Includes 9% interest rate
- Lease classifies as an operating lease

In this simplified example, the lease liability & the right-of-use asset are both $179,437 (present value of six payments of $40,000 each, at a discount rate of 9%)

The journal entry would be
Dr. Right-of-use asset – operating lease $179,437
Cr. Lease liability – operating lease ($179,437)

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Operating Lease

Lessee Model – Subsequent Accounting

- Unwind liability using the effective interest method
- Straight-line expense over term
- ROU asset: Reduced by the difference between the annual straight-line lease expense & the annual interest cost on the lease liability, i.e. amortize the asset to achieve straight-line total lease expense

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Lease Example #2 – Operating Lease

In this simplified example, if the arrangement is determined to be an ***operating lease***, there is only rent expense & the expense is straight-lined

Operating Lease				
	Payments	Asset	Liability	Total Expense
Commencement		179,437	179,437	
Year 1	40,000	155,586	155,586	40,000
Year 2	40,000	129,589	129,589	40,000
Year 3	40,000	101,252	101,252	40,000
Year 4	40,000	70,365	70,365	40,000
Year 5	40,000	36,698	36,698	40,000
Year 6	40,000	0	0	40,000
Total	240,000			240,000

Lease Example #2
Operating Lease

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Journal Entries Lease – Example #2

Beginning Balances – Year 1 – Operating Lease
- Right-of-use asset – operating lease $179,437
- Lease liability – operating lease ($179,437)

Year 1 Activity – Operating Lease
To record lease payment & year 1 journal entries
Dr. Lease expense $40,000
Cr. Accounts Payable (or cash) ($40,000)
Dr. Lease liability – operating lease $23,851
Cr. Right-of-use asset – operating lease ($23,851)

Ending Balances – Year 1 – Operating Lease
- Right-of-use asset – operating lease $155,589
- Lease liability – operating lease ($155,586)

- Expense for the year $40,000

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Comparison Of Journal Entries

Lease Example #1 & #2

Beginning Balances - Year 1

	Finance Lease Dr.	Finance Lease Cr.	Operating Lease Dr.	Operating Lease Cr.
Right-of-use asset	$ 179,437		$ 179,437	
Lease liability		$ (179,437)		$ (179,437)

Year 1 Activity

	Finance Lease Dr.	Finance Lease Cr.	Operating Lease Dr.	Operating Lease Cr.
Lease liability	$ 23,851		$ 23,851	
Interest expense	$ 16,149		$ -	
Lease expense	$ -		$ 40,000	
Accounts Payable		$ (40,000)		$ (40,000)
Amortization expense	$ 29,906		$ -	
Right-of-use asset		$ (29,906)		$ (23,851)

Ending Balances - Year 1

	Finance Lease Dr.	Finance Lease Cr.	Operating Lease Dr.	Operating Lease Cr.
Right-of-use asset	$ 149,531		$ 155,586	
Lease liability		$ (155,586)		$ (155,586)
Expense for the year	$ 46,055		$ 40,000	

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Lease Example #3 Details

Finance Lease

- Six-year lease
- No renewal options
- Lease payments at $30,000 escalating $10,000 every other year, paid EOY
- Includes 9% interest rate
- Lease classifies as a finance lease

In this example, the lease liability & the right-of-use asset are both $174,306 (present value of six payments escalating by $10,000 every second year from $30,000 to $50,000 each, at a discount rate of 9%)

The journal entry would be
Dr. Right-of-use asset – finance lease $174,306
Cr. Lease liability – finance lease ($174,306)

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Lease Example #3 - Finance Lease

In this example for a *finance lease*, the lessee recognizes both amortization expense & interest expense, with higher expense in the initial years

		Finance Lease				
	Payments	Asset	Liability	Amort. Expense	Interest Expense	Total Expense
Commencement		174,306	174,306			
Year 1	30,000	145,255	159,994	29,051	15,688	44,739
Year 2	30,000	116,204	144,394	29,051	14,400	43,451
Year 3	40,000	87,153	117,390	29,051	12,996	42,047
Year 4	40,000	58,102	87,955	29,051	10,565	39,616
Year 5	50,000	29,051	45,871	29,051	7,916	36,967
Year 6	50,000	0	0	29,051	4,129	33,180
Total	240,000			174,306	65,694	240,000

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Journal Entries - Lease Example #3

Finance Lease

Beginning Balances – Year 1 – Finance Lease
- Right-of-use asset – finance lease $174,306
- Lease liability – finance lease ($174,306)

Year 1 Activity – Finance Lease
To record lease payment & year 1 journal entries
Dr. Lease liability – finance lease $14,312
Dr. Interest expense $15,688
Cr. Accounts Payable (or cash) ($30,000)
Dr. Amortization expense $29,051
Cr. Right-of-use asset – finance lease ($29,051)

Ending Balances – Year 1 – Finance Lease
- Right-of-use asset – finance lease $145,255
- Lease liability – finance lease ($159,994)

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- Expense for the year $44,739

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Lease Example #4 Details

Operating Lease

Lease Example #4 Details

- Six-year lease
- No renewal options
- Lease payments at $30,000 escalating $10,000 every other year, paid EOY
- Includes 9% interest rate
- Lease classifies as an operating lease

In this example, the lease liability & the right-of-use asset are both $174,306 (present value of six payments escalating by $10,000 every second year from $30,000 to $50,000 each, at a discount rate of 9%)

The journal entry would be
Dr. Right-of-use asset – operating lease $174,306
Cr. Lease liability – operating lease ($174,306)

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Lease Example #4 – Operating Lease

For leases with escalating payments in ***operating lease***, lessee recognizes only rent expense on straight-line basis. Difference in asset amortization & liability is cumulative difference of payments & expense

Operating Lease	Payments	Asset	Liability	Straightline Adjustment to Expense	Cumulative Adjustment in ROU Asset	Total Straightlined Expense
Commencement		174,306	174,306			
Year 1	30,000	149,994	159,994	10,000	10,000	40,000
Year 2	30,000	124,394	144,394	10,000	20,000	40,000
Year 3	40,000	97,390	117,390	0	20,000	40,000
Year 4	40,000	67,955	87,955	0	20,000	40,000
Year 5	50,000	35,871	45,871	(10,000)	10,000	40,000
Year 6	50,000	0	0	(10,000)	0	40,000
Total	240,000			0		240,000

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Operating Lease

Journal Entries - Lease Example #4

Beginning Balances – Year 1 – Operating Lease

- Right-of-use asset – operating lease $174,306
- Lease liability – operating lease ($174,306)

Year 1 Activity – Operating Lease

To record lease payment & year 1 journal entries

Dr. Lease expense $40,000
Cr. Accounts payable (or cash) ($30,000)
Cr. Right-of-use asset – operating lease ($10,000)
Dr. Lease liability – operating lease $14,312
Cr. Right-of-use asset – operating lease ($14,312)

Ending Balances – Year 1 – Operating Lease

- Right-of-use asset – operating lease $149,994
- Lease liability – operating lease ($159,994)

- Expense for the year $40,000

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Lease Example #3 & #4

Journal Entries - Comparison Of Journal Entries

	Finance Lease Dr.		Finance Lease Cr.		Operating Lease Dr.		Operating Lease Cr.	
Beginning Balances - Year 1								
Right-of-use asset	$	174,306			$	174,306		
Lease liability			$	(174,306)			$	(174,306)
Year 1 Activity								
Lease liability	$	14,312			$	14,312		
Interest expense	$	15,688			$	-		
Lease expense	$	-			$	40,000		
Accounts Payable			$	(30,000)			$	(30,000)
Amortization expense	$	29,051			$	-		
Right-of-use asset			$	(29,051)			$	(24,312)
Ending Balances - Year 1								
Right-of-use asset	$	145,255			$	149,994		
Lease liability			$	(159,994)			$	(159,994)
Expense for the year	$	44,739			$	40,000		

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Presentation & Disclosure Example

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Lessee Balance Sheet Presentation

The below table shows acceptable and unacceptable ways to present these balances on the lessee's balance sheet (note that for simplicity this is an unclassified balance sheet).

Separate Presentation *Acceptable* Balance Sheet Period Ended December 31, 20X1		**Presentation with Other Assets and Liabilities and Disclosed Separately** *Acceptable* Balance Sheet Period Ended December 31, 20X1		**Combined Presentation** *Not Acceptable* Balance Sheet Period Ended December 31, 20X1	
ROU assets – operating leases	25,000	ROU assets – operating leases	25,000	ROU assets	25,900
ROU assets – finance leases	900	Property, plant and equipment	2,000	Property, plant and equipment	1,100
Property, plant and equipment	1,100				
Operating lease liabilities	25,150	Operating lease liabilities	25,150	Lease liabilities	26,000
Finance lease liabilities	850	Other liabilities	1,850	Other liabilities	1,000
Other liabilities	1,000	<u>Disclosure</u> For the period ended December 31, 20X1, right-of-use assets from finance leases of $900 are included as part of property, plant and equipment. For the period ended December 31, 20X1, lease liabilities from finance leases of $850 are included as part of other liabilities.			

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Tips for Adoption & Implementation

- Identify a champion
- Identify your inventory of leases
- Determine transition method
- Determine discount rate
- Review debt covenants
- Review capitalization policy/threshold
- Determine technology needs & tools to use for calculations
- Consideration of post-implementation process changes

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Questions

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Cryptocurrency: Preparing your Entity for Crypto Donations

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Kevin J. Keane, Jr.
November 16, 2022

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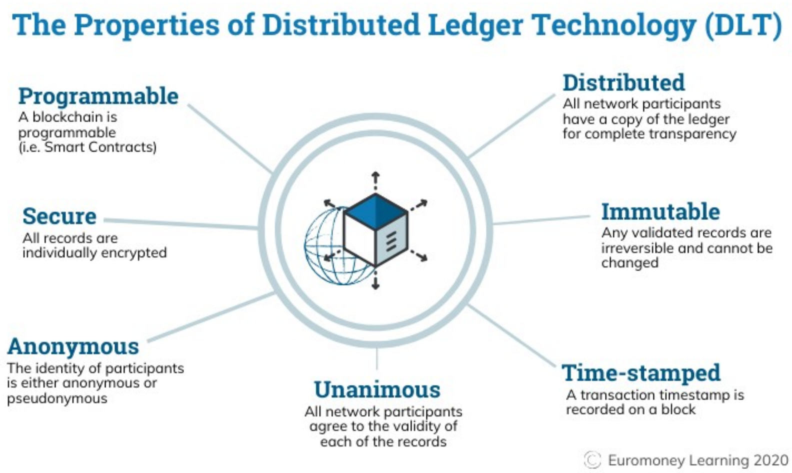
What is Blockchain Technology?



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Blockchain

- A **blockchain** is a cryptographic database maintained by a network of computers, each of which stores a copy of the most up-to-date version. A blockchain **protocol** is a set of rules that dictate how the computers in the network, called **nodes**, should verify new transactions and add them to the chain.

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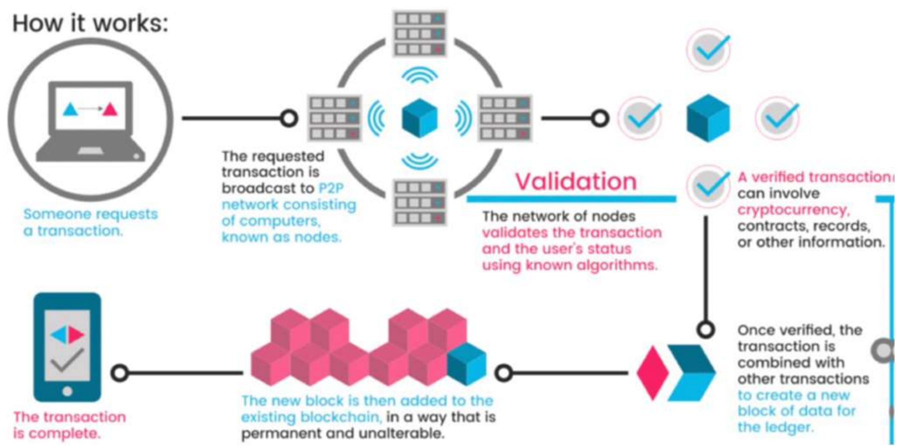
Blockchain *(continued)*



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Digital vs. Crypto

- **Digital currency,** also known as digital money or electronic money or electronic currency, is a type of currency available only in digital form, allowing for instantaneous transactions and borderless transfer-of-ownership. Digital currency can represent regulated fiat.
- **Cryptocurrency** is a digital medium of exchange using cryptography to secure financial transactions, control the creation of additional units, and verify the transfer of assets.
- **Stablecoin** is a type of cryptocurrency that is pegged to a currency like the U.S. dollar, a commodity's price such as gold, or algorithmically pegged to other cryptos.
- Helpful Resources: [Blockchain Universal Glossary]

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Using Cryptocurrency

Using cryptocurrencies isn't like using a fiat currency. You can't hold cryptocurrency in your hand. Cryptocurrency only exists on the blockchain. Users access their cryptocurrency using codes called *public* and *private keys.*

Private Key = Ownership

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Cryptocurrency Gift Considerations

- Consider the risks associated with accepting cryptocurrency gifts
  - Volatility
  - Regulations
  - Security
- Establish a cryptocurrency gift acceptance policy
  - Developing and maintaining strong policies can mitigate the risks of accepting cryptocurrency gifts

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Establishing a Cryptocurrency Gift Policy

- Organizations should contemplate addressing the following questions in its gift acceptance policy:
  - Will the organization accept cryptos? If so, how will the organization accept cryptos?
  - Will the organization accept all cryptos or only certain cryptos?
  - Will the organization hold the crypto donations or immediately liquidate crypto donations?
  - Will the organization suffer reputational risk for accepting crypto donations?

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Accepting Cryptocurrency Donations

- How will your organization accept cryptocurrency donations?
  - Third-party service providers
  - In-house without any intermediary
- Managing cryptocurrency donations
  - Custody / digital security
  - Market volatility
  - Accounting considerations

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Accounting for Cryptocurrency

- On October 12, 2022, the Financial Accounting Standards Board ("FASB") reached a tentative decision about the accounting for crypto assets that are created or reside on the blockchain, are secured through cryptography, do not provide rights, or claims on underlying goods or services, are fungible and currently accounted for as intangible assets under US GAAP.
- FASB decided to require an entity to measure crypto assets at fair value, using Topic 820, Fair Value Measurement.
- Summary of changes:
  - Measure crypto assets at fair value, using the guidance in Topic 820, *Fair Value Measurement*
  - Recognize increases and decreases in fair value in comprehensive income each reporting period
  - Recognize certain costs incurred to acquire crypto assets, such as commission, as an expense
- Until the FASB issues an Accounting Standard Update codifying this change, it will not be officially adopted as the appropriate treatment for cryptocurrencies.

Tax Compliance Considerations in a Post-Pandemic World

Garrett Higgins
Kristin Anderson
November 16, 2022

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Compliance Considerations for NFP Leaders

- Nonprofit organizations continue to evolve and adapt to the changes and challenges caused by the COVID-19 pandemic.
- These changes result in new scenarios and fact patterns, causing new compliance considerations and needs.
- The Inflation Reduction Act passed in August has some changes affecting nonprofits.

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The Inflation Reduction Act

- Signed August 2022
- Includes changes to the "Section 179D tax deduction"
- What are Section 179D deductions?
  - Deductions for energy-efficient commercial construction
  - Available for nonprofits
  - Deduction is up to $5 per square foot for buildings placed into service after 2022.

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Increased Federal Funding to IRS

As part of the Inflation Reduction Act

- $46 billion to be spent on IRS enforcement over the next 10 years.
  - Roughly double the current budget
  - Will likely be used to hire IRS enforcement staff at all levels.
  - More important than additional staff will be IRS investments in technology that will allow enforcement to be more efficient.

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What could an IRS expansion mean for nonprofits?

- The Final Regulations on Unrelated Business Income "Silo" Rules
  - Need to ensure that nonprofits with multiple unrelated activities are calculating taxable income properly by "silo".
    - Pre 2018 NOLs will and are running out.
    - Post 2017 NOLs can only offset 80% of a silo's taxable income.
    - Current year activities with losses cannot offset different activities with income.
  - Need to ensure that nonprofits with partnership investments are reviewing ownership percentages and control criteria.

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Workforce-related compliance issues

Organizations now have an increased remote workforce in numerous states

- State tax withholding regulations
  - Home state regulations vs. other states where employees are working
- Working with your payroll service providers
- Establishing HR policies

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Workforce-related compliance issues

International employees and independent contractors

- Individuals telecommuting from abroad
- Rise of Global PEOs
- Foreign workers - employee vs. independent contractor determination
  - Independent contractors: U.S. Withholding rules and IRS Forms

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Post-Pandemic Fundraising Considerations

- Certain funders may now have less ability or willingness to give.
- Organizations should consider this in their fundraising plans and strategies.
- For 501(c)(3) organizations that must meet the public support test to maintain their exempt status, continuing to maintain public support above the 33 1/3% threshold should be top of mind.
- Review your organization's public support % trend – incline or decline.

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Post-Pandemic Fundraising Considerations

- "Excess contributors" are not included as public support to the extent their contributions over 5 years exceed 2% of the total.
  - Donor advised funds are <u>not</u> excess contributors.

    Individuals who give through donor advised funds – the contributor is the DAF.
- Publicly-supported charities and government entities <u>are</u> sources of public support.
- Investment income is <u>not</u> public support.

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Post-Pandemic Fundraising Considerations

Organizations that struggle with maintaining an adequate public support percentage:

- Organizations with a relatively small number of contributors that are not government or public sources:
  - It's not so much getting more funding as it is getting more funding from a wider, more equally distributed base, and public sources.
- Organizations with a large endowment that provides annual interest and dividends.

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"Let's get creative!" Establishing new revenue streams for the organization

- Related vs. Unrelated Income

  Unrelated business income is income from:

  1) a trade or business,
  2) regularly carried on,
  3) not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption

Where do I find our organization's charitable purposes?

- Articles of organization
- IRS exemption application

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What we are seeing – revenue streams

1) Consulting and other professional services
2) Services provided to groups other than charitable class served by the organization
3) Educational organizations providing services / facilities to non-students
4) Joint ventures with for-profits
   - Joint venture agreements need to protect the exempt status of NFP partner and provide control to NFP partner.
5) Alternative investments silo rules

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The doors are back open - *Sch. F - Activities Outside the United States*

Nonprofit organizations continue to increase their presence and activities in foreign countries:

- Offices abroad
  - Employees in foreign offices
- U.S. employees that are also paid by foreign related entities
- Independent contractors working overseas
- Grants to foreign organizations or foreign individuals
- New legal entities formed in foreign jurisdictions
- New offices that are branch offices of the U.S. entity

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Form 8858 – required for 'foreign branches" and "foreign disregarded entities"

- What is a "foreign branch"?
  - A foreign office or geographical location that is not a separately formed legal entity in the foreign country.
  - Separate set of books are maintained
- Foreign companies 100% owned by a U.S. nonprofit parent
  - Can file an election to be treated as a disregarded entity – an entity not separate from its U.S. owner (Form 8832).
  - Otherwise, default is a corporation (Form 5471).

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Form 5471 – required for controlled foreign corporations

- If the foreign corporation is not *controlled* by the NFP, then it is not a controlled corporation – no filing requirement.
  - Control via 'voting power' (right to appoint or elect the foreign entity's board, or majority board overlap)
  - Control via majority stock ownership

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Employee Retention Credit

- Currently, IRS has approximately 219,000 unprocessed 941-X forms to claim these credits, and 3.4 million unprocessed original 941 forms.
- IRS issued a warning to employers on October 19th:

  "Employers warned to beware of third parties promoting improper Employee Retention Credit claims"

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Employee Retention Credit

"We thought we weren't eligible."

"Is there still time?"

The statute of limitations for filing amended quarterly returns is generally three years from the date of filing the Form 941. For example, in order to apply for the Employee Retention Credit for the second quarter of 2020, the amended return needs to be submitted by April 15, 2024.

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Employee Retention Credit

IRS has started selecting claims for review.

Just because an organization has received its ERC refund does not mean it cannot be later selected for review.

Make sure you maintain adequate documentation for at least five years regarding your:

- Gross receipts decline
- Shutdown orders with specific dates
- Eligibility position memo
- Calculation (no PPP double-dipping)

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Not-for-Profit Executive Forum

November 16, 2022

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