



NONPROFIT INTEGRITY ACT OF 2004

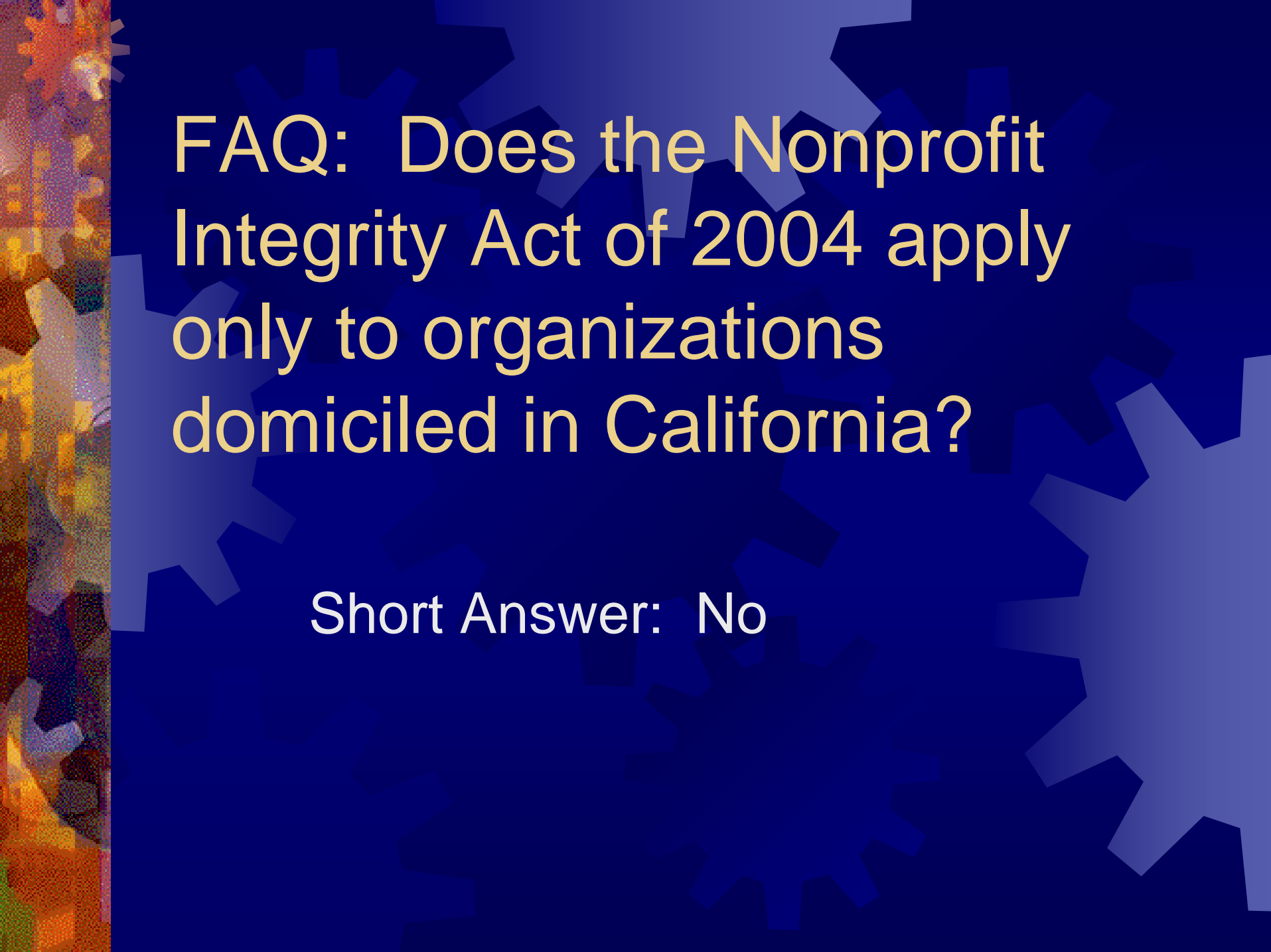
Effective January 1, 2005

Overview: The Act makes changes to existing law re: charity registration, charity governance and charitable solicitation

NONPROFIT INTEGRITY ACT OF 2004

☀ Applies to:

- ☀ Charitable Organizations: Nonprofit corporations, unincorporated associations and charitable trusts
- ☀ Professional fundraisers: Commercial fundraisers and fundraising counsel



FAQ: Does the Nonprofit Integrity Act of 2004 apply only to organizations domiciled in California?

Short Answer: No

NONPROFIT INTEGRITY ACT OF 2004

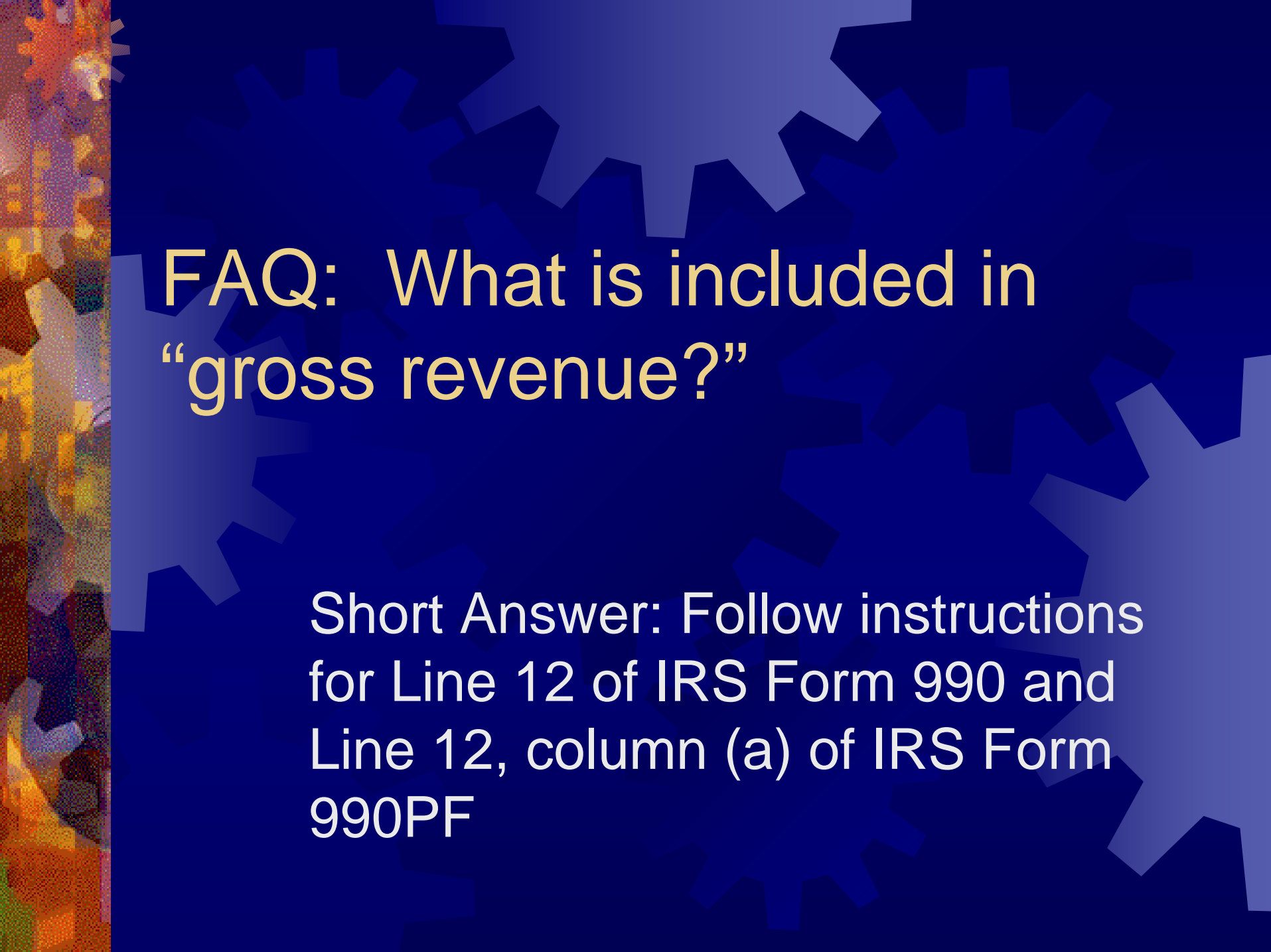
- ★ A charity must register with the Attorney General within 30 days after it first receives property - GC sec. 12585
- ★ Registration requires a CT-1 and a copy of governing instrument
- ★ Property includes money and any other type of real or personal property

Independent Audit Of Annual Financial Statements

☀ Applies to the following charitable entities with \$2 million or more in gross revenue *

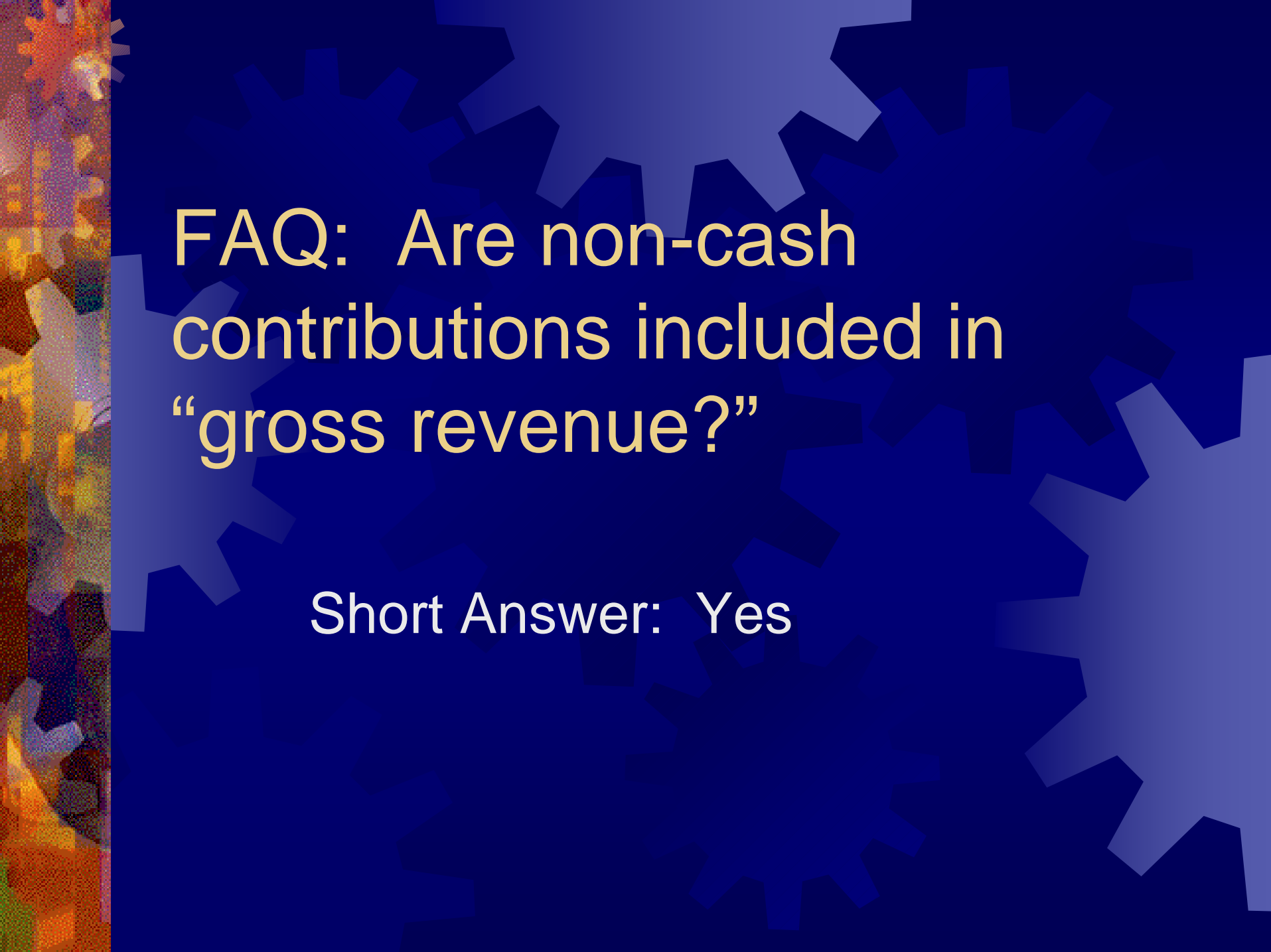
- Nonprofit Corporations
- Unincorporated Associations
- Trusts

* except revenue from government grants and contracts where an accounting is required



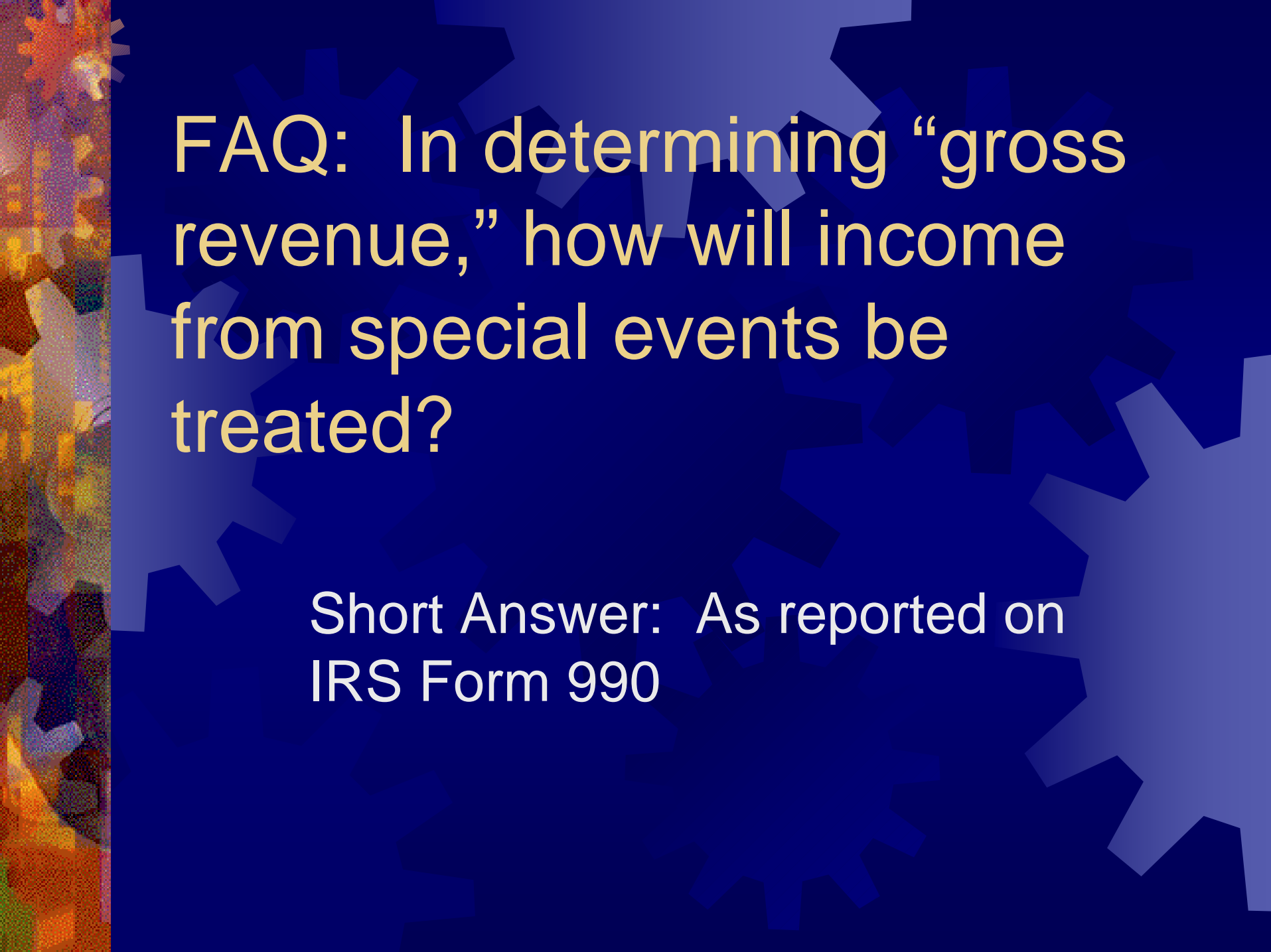
FAQ: What is included in “gross revenue?”

Short Answer: Follow instructions
for Line 12 of IRS Form 990 and
Line 12, column (a) of IRS Form
990PF



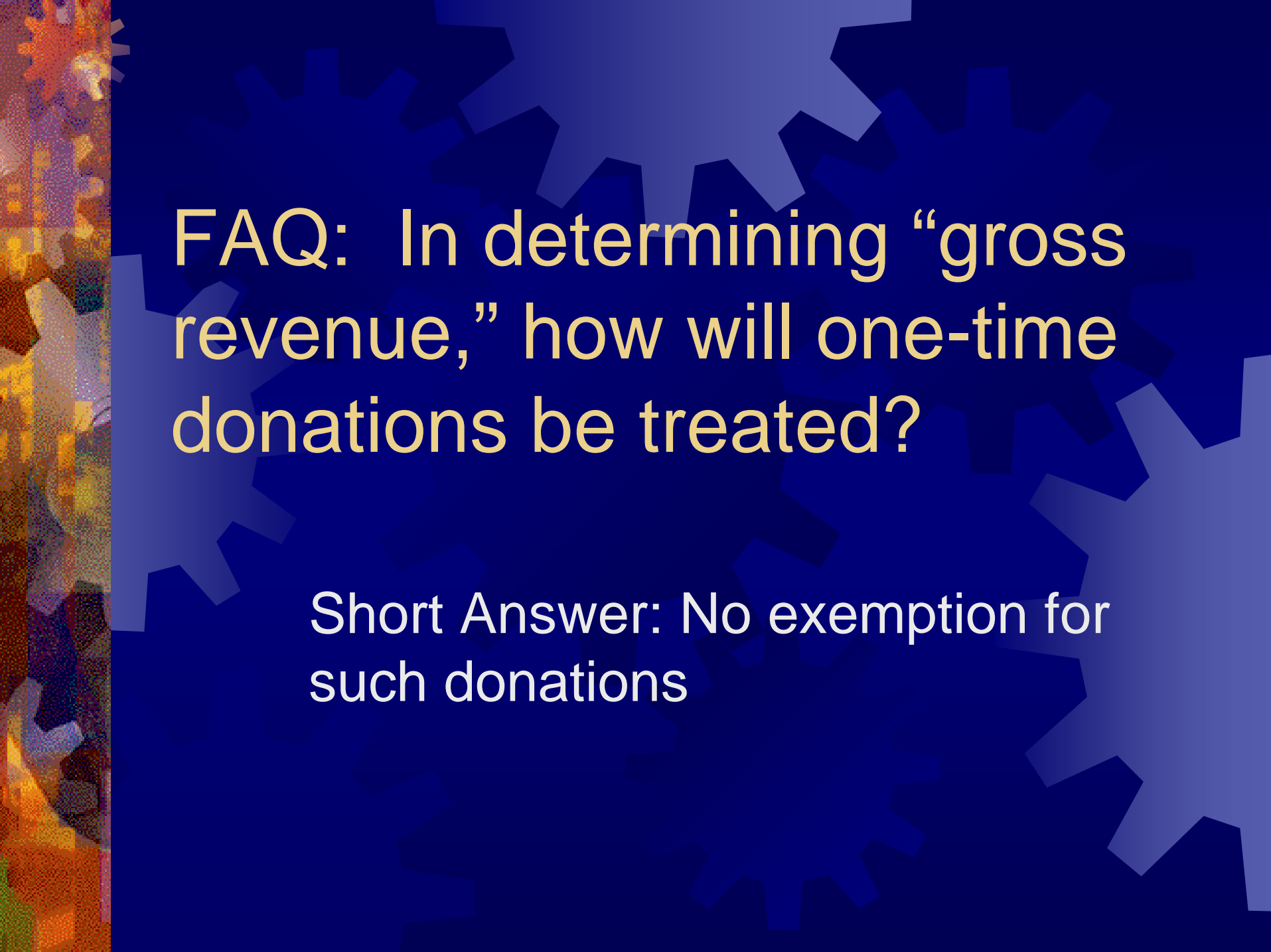
FAQ: Are non-cash
contributions included in
“gross revenue?”

Short Answer: Yes



FAQ: In determining “gross revenue,” how will income from special events be treated?

Short Answer: As reported on
IRS Form 990



FAQ: In determining “gross revenue,” how will one-time donations be treated?

Short Answer: No exemption for such donations

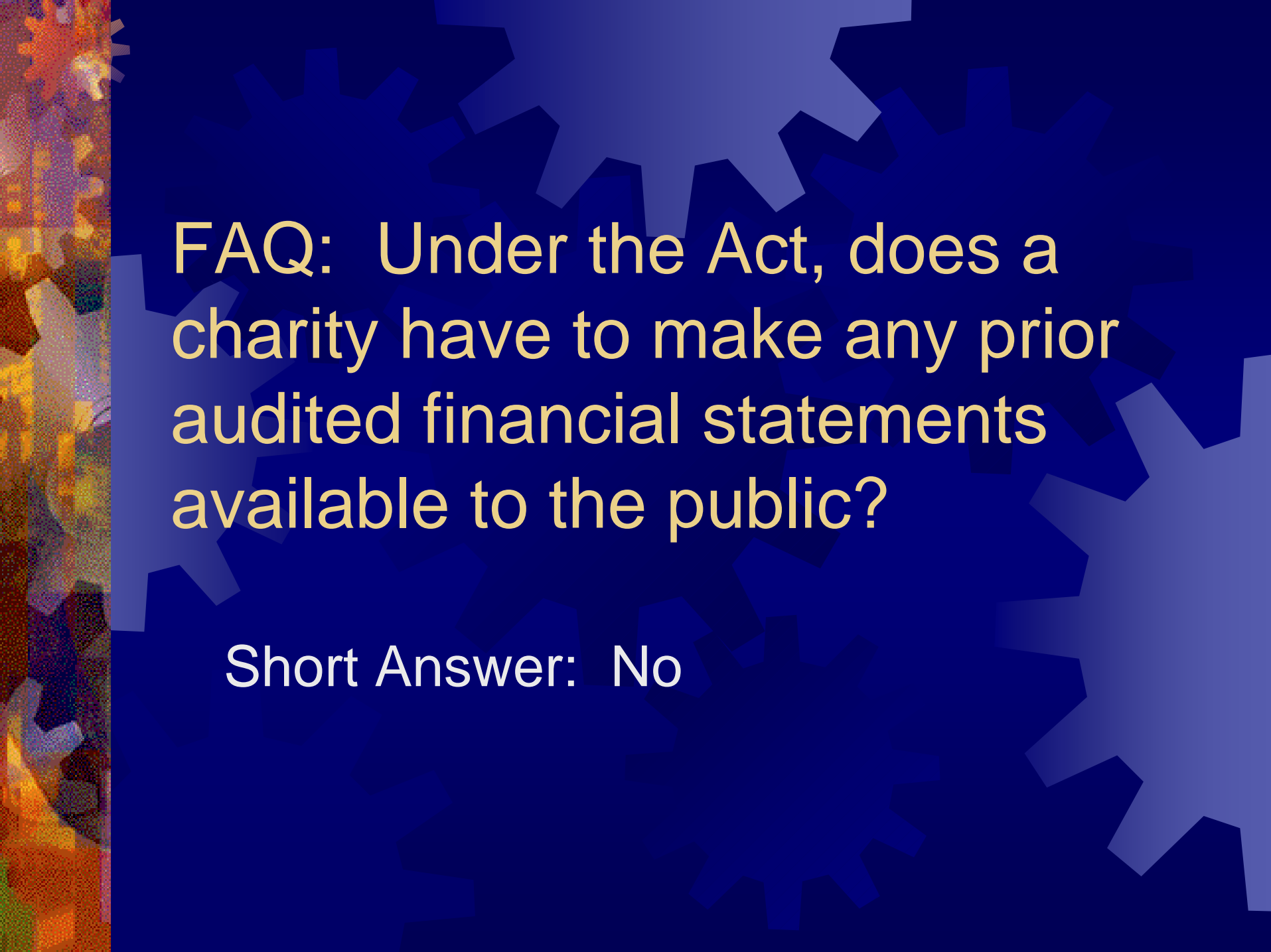
Independent Audit Of Annual Financial Statements

- ☀ Must be made available to the Attorney General and the public
- ☀ No later than 9 months after close of fiscal year



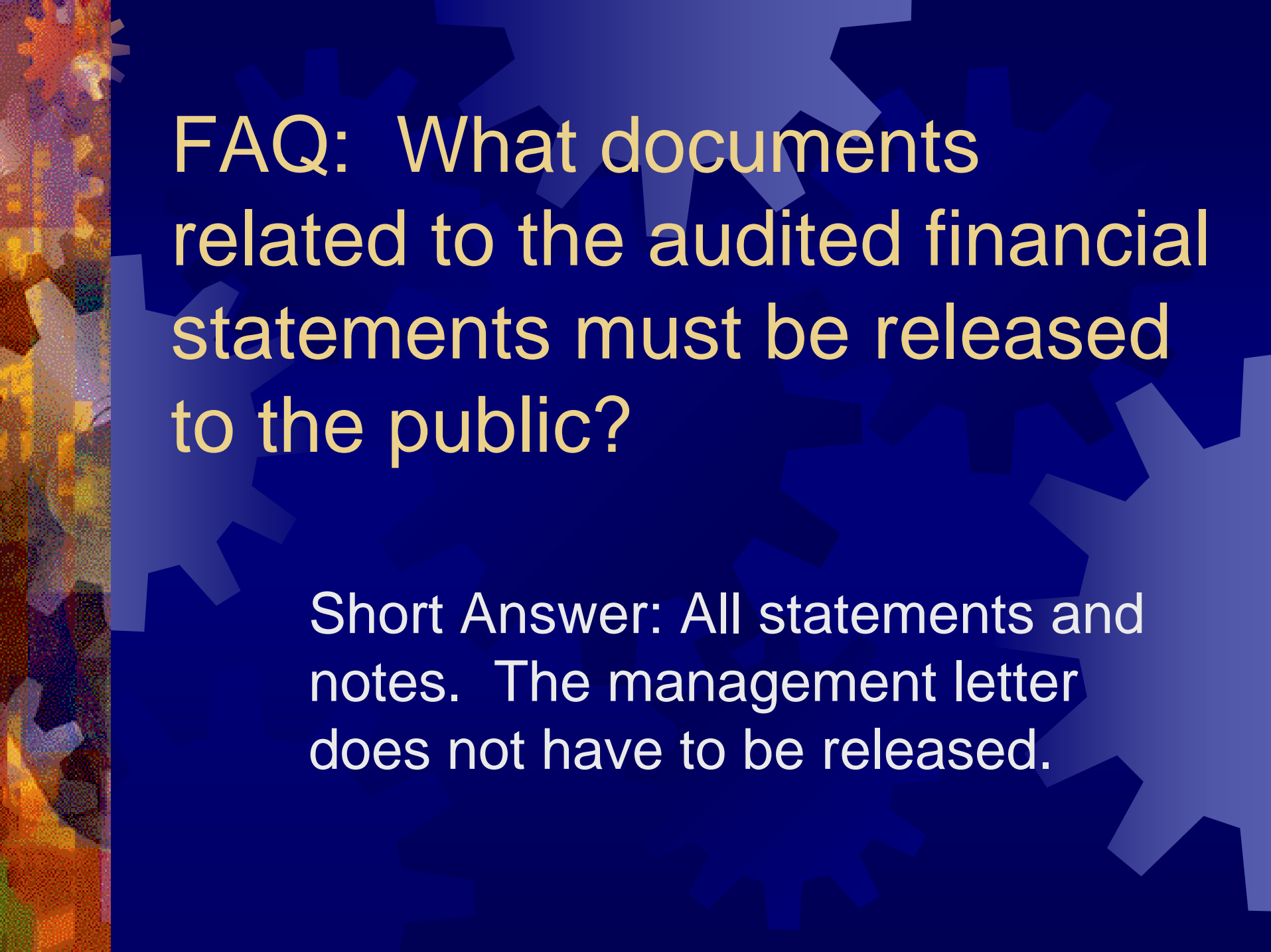
FAQ: What is the effective date for a certified audit?

Short Answer: A certified audit is required for all fiscal years ending on or after June 30, 2005



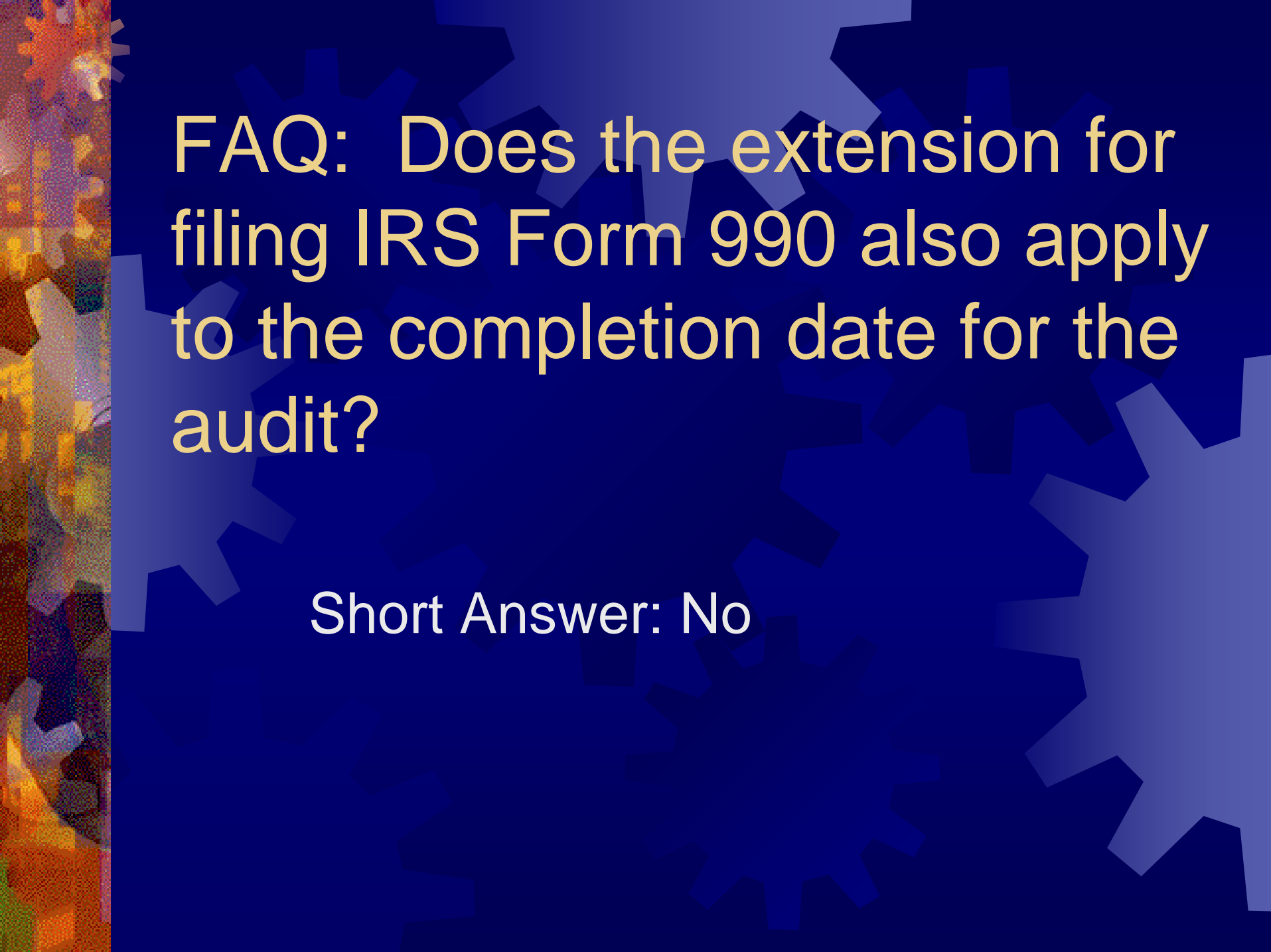
FAQ: Under the Act, does a charity have to make any prior audited financial statements available to the public?

Short Answer: No



FAQ: What documents related to the audited financial statements must be released to the public?

Short Answer: All statements and notes. The management letter does not have to be released.



FAQ: Does the extension for filing IRS Form 990 also apply to the completion date for the audit?

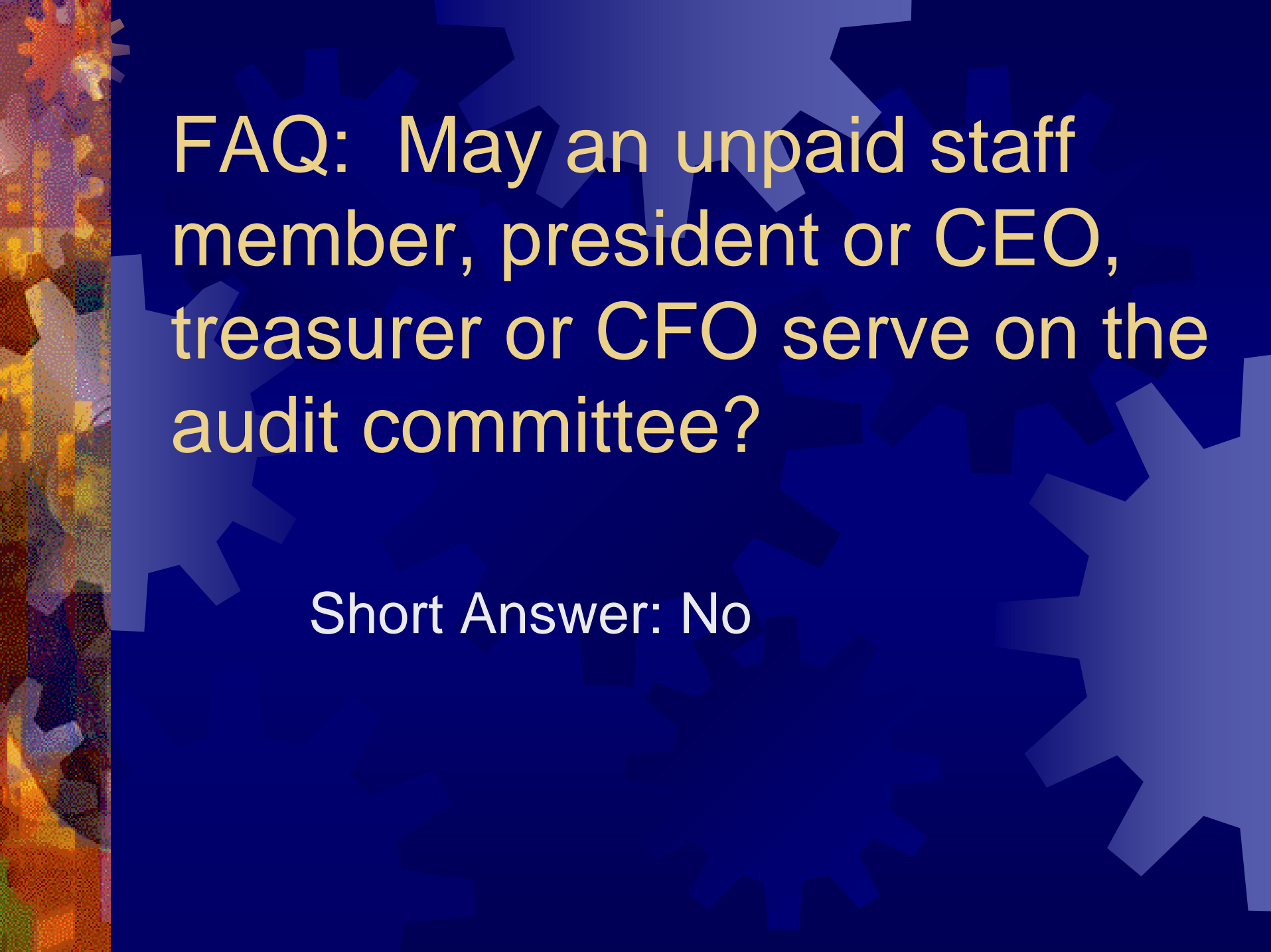
Short Answer: No

Audit Committee Required for Nonprofit Corporations *

✱ Members of Audit Committee

- ✱ Appointed by Governing Board
- ✱ Can be non-Governing Board members
- ✱ Cannot be:
 - ✱ Staff Members (employees of the charity)
 - ✱ President or CEO
 - ✱ Treasurer or CFO
 - ✱ Comprised of 50% or more from Finance Committee

* With \$2 million or more revenue exclusive of government grants & contracts



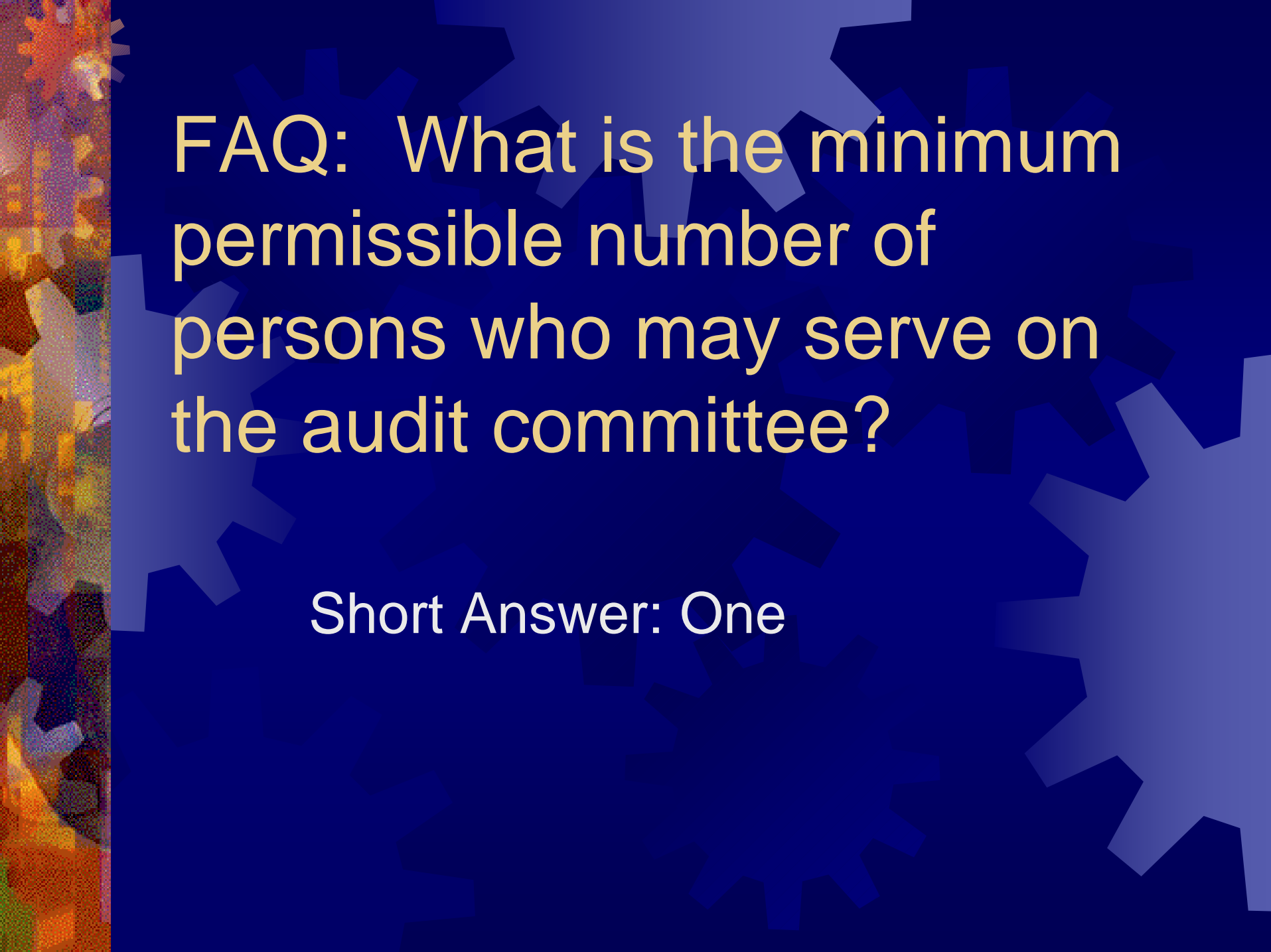
FAQ: May an unpaid staff member, president or CEO, treasurer or CFO serve on the audit committee?

Short Answer: No



FAQ: When does the audit committee have to be appointed?

Short Answer: On January 1, 2005 or as soon as the Governing Board meets. While a reasonable delay is okay, an audit committee should be appointed no later than the end of the first quarter.



FAQ: What is the minimum permissible number of persons who may serve on the audit committee?

Short Answer: One

Duties of the Audit Committee

- Recommend hiring and firing of CPA to the Governing Board
- Confirm that the financial affairs are in order
- Review and accept/reject audit
- Approve non-audit services by CPA

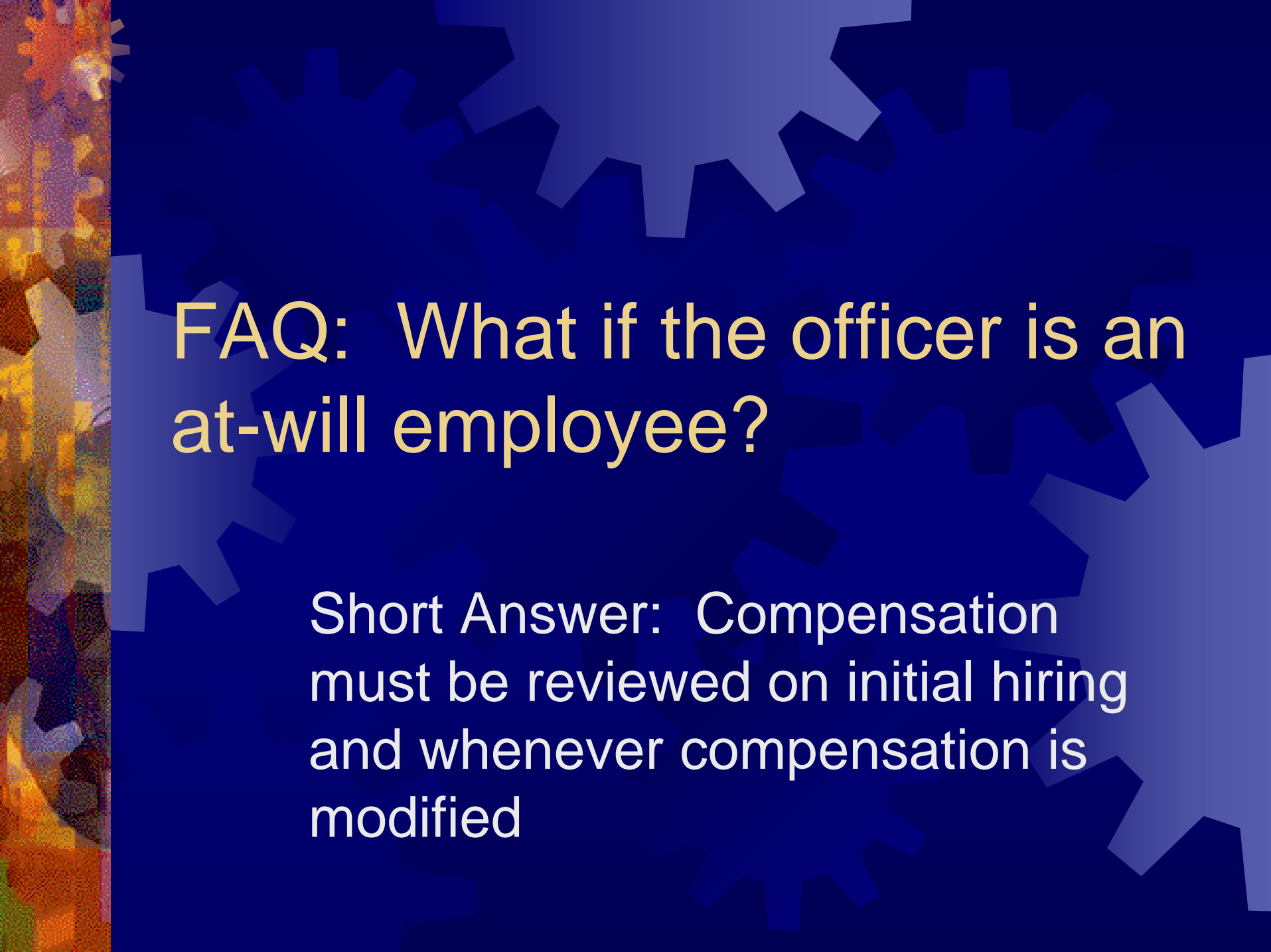
Executive Compensation Must Be Reviewed And Approved

- ★ By the Governing Board or Authorized Board Committee
- ★ Applies to:
 - ★ Nonprofit Corporations
 - ★ Unincorporated Associations
 - ★ Trusts

GC 12586(g)

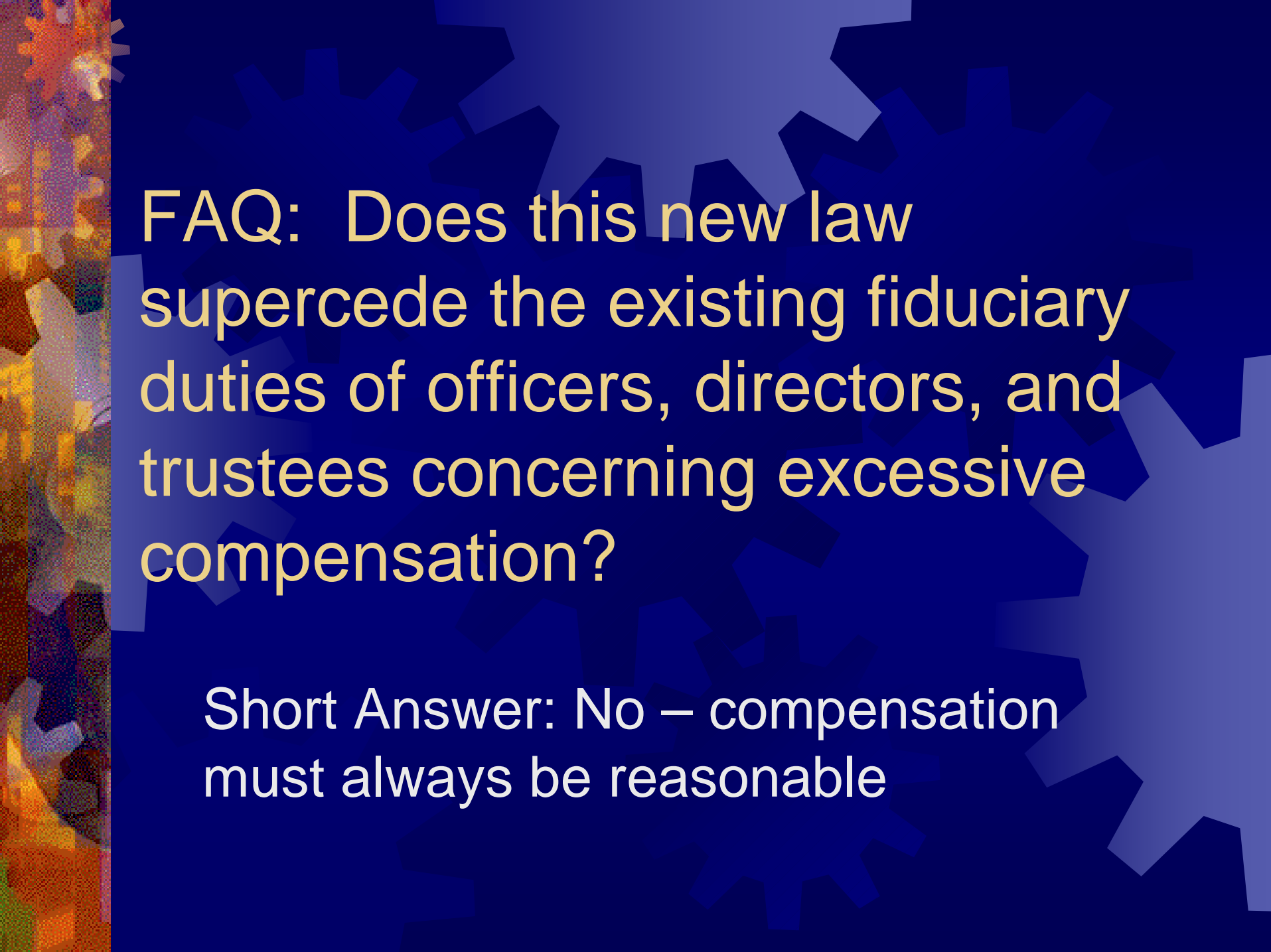
Executive Compensation Must Be Reviewed And Approved

- ✴ For the following positions:
 - ✴ President or CEO
 - ✴ Treasurer or CFO
- ✴ “Just and reasonable” compensation
- ✴ Applies when:
 - ✴ Initial Hiring of the Officer
 - ✴ Renewing or Extending the Employment Term
 - ✴ Modifying the Compensation



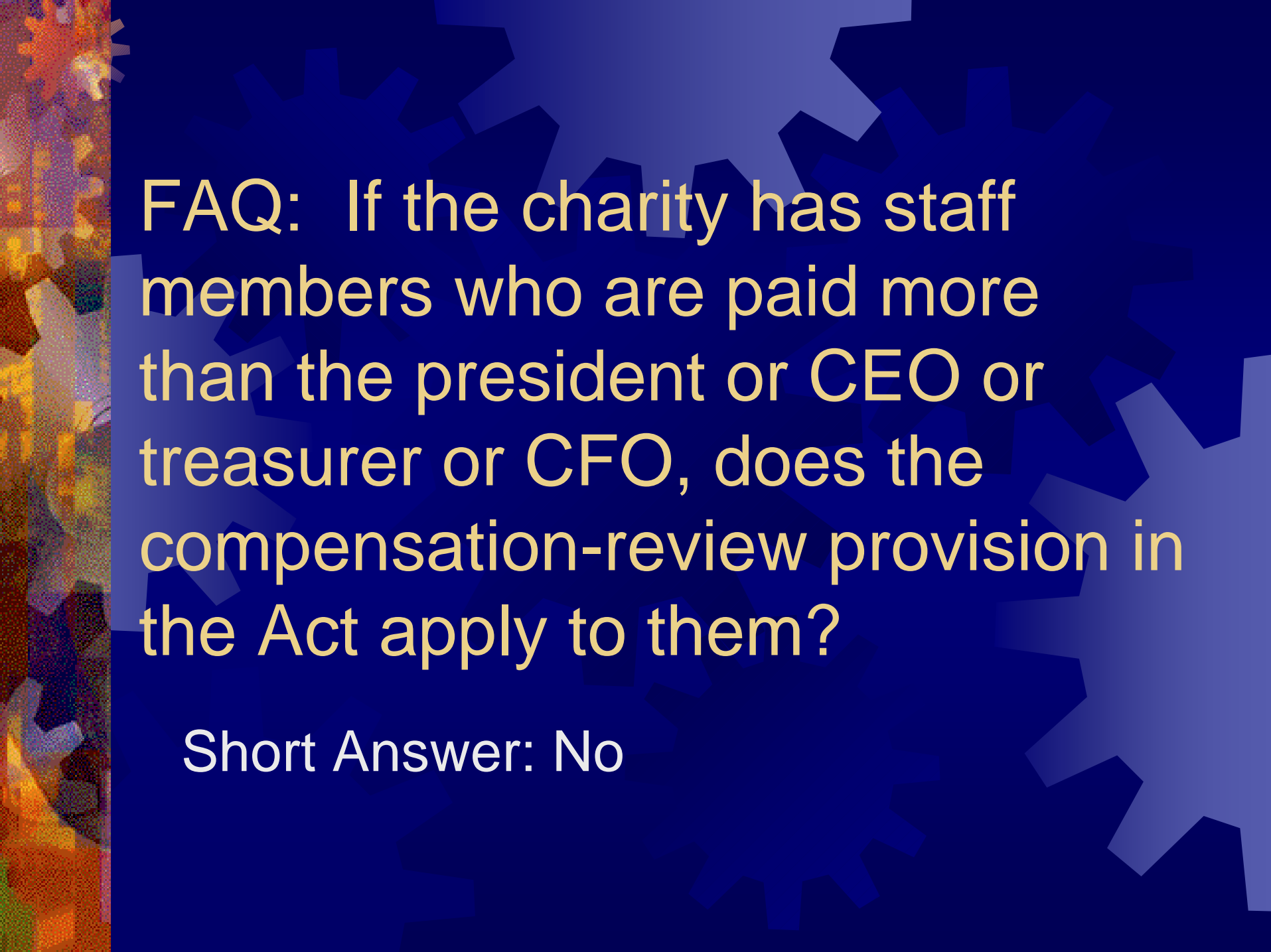
FAQ: What if the officer is an at-will employee?

Short Answer: Compensation must be reviewed on initial hiring and whenever compensation is modified



FAQ: Does this new law
supercede the existing fiduciary
duties of officers, directors, and
trustees concerning excessive
compensation?

Short Answer: No – compensation
must always be reasonable



FAQ: If the charity has staff members who are paid more than the president or CEO or treasurer or CFO, does the compensation-review provision in the Act apply to them?

Short Answer: No

Commercial Fundraisers

- ☀ Commercial Fundraiser defined:
 - ☀ Any individual, corporation, or any legal entity who does the following for compensation:
 - solicits assets for charitable purposes,
 - receives or controls such solicited assets, or
 - employs any compensated person to do either
- ☀ Must file written notice to Attorney General
 - ☀ 10 working days before the start of a solicitation campaign or event
 - ☀ Exception for Disaster Solicitations

GC sec. 12599(h)

Commercial Fundraisers Must Have Written Contracts

- ✱ For every solicitation campaign or event
- ✱ Voidable unless the commercial fundraiser is registered with the Attorney General
- ✱ Must be signed by an official authorized by the Charity's Governing Board

Commercial Fundraisers Must Have Written Contracts

- ★ The written contract must contain or state:
 - ★ Charitable Purpose
 - ★ Obligations of both parties
 - ★ Fee arrangement
 - ★ Effective, start, and termination dates
 - ★ 5-day deposit of contributions requirement

GC sec. 12599(I)

Commercial Fundraisers Must Have Written Contracts

- ★ The written contract must contain or state:
 - ★ Charity's control of content and frequency of solicitation
 - ★ Maximum amount to secure a person's attendance, approval, sponsorship or endorsement of an event
 - ★ Charity's cancellation rights

FUNDRAISING COUNSEL

- ★ Fundraising Counsel is any person who for compensation
 - Plans, manages, consults or prepares material for solicitation of assets for charitable purposes
 - Does not solicit assets for charitable purposes
 - Does not receive/control such assets
 - Does not employ persons who solicit assets or receive/control such assets
- ★ Notice to the Attorney General
 - 10 working days before the start of a solicitation campaign or event
 - Exception for Disaster Solicitations

Fundraising Counsel Must Have Written Contracts

- ✱ For every solicitation campaign or event
- ✱ Voidable unless the fundraising counsel is registered with the Attorney General
- ✱ Must be signed by an official authorized by the Charity's Governing Board

GC sec. 12599.1(e)

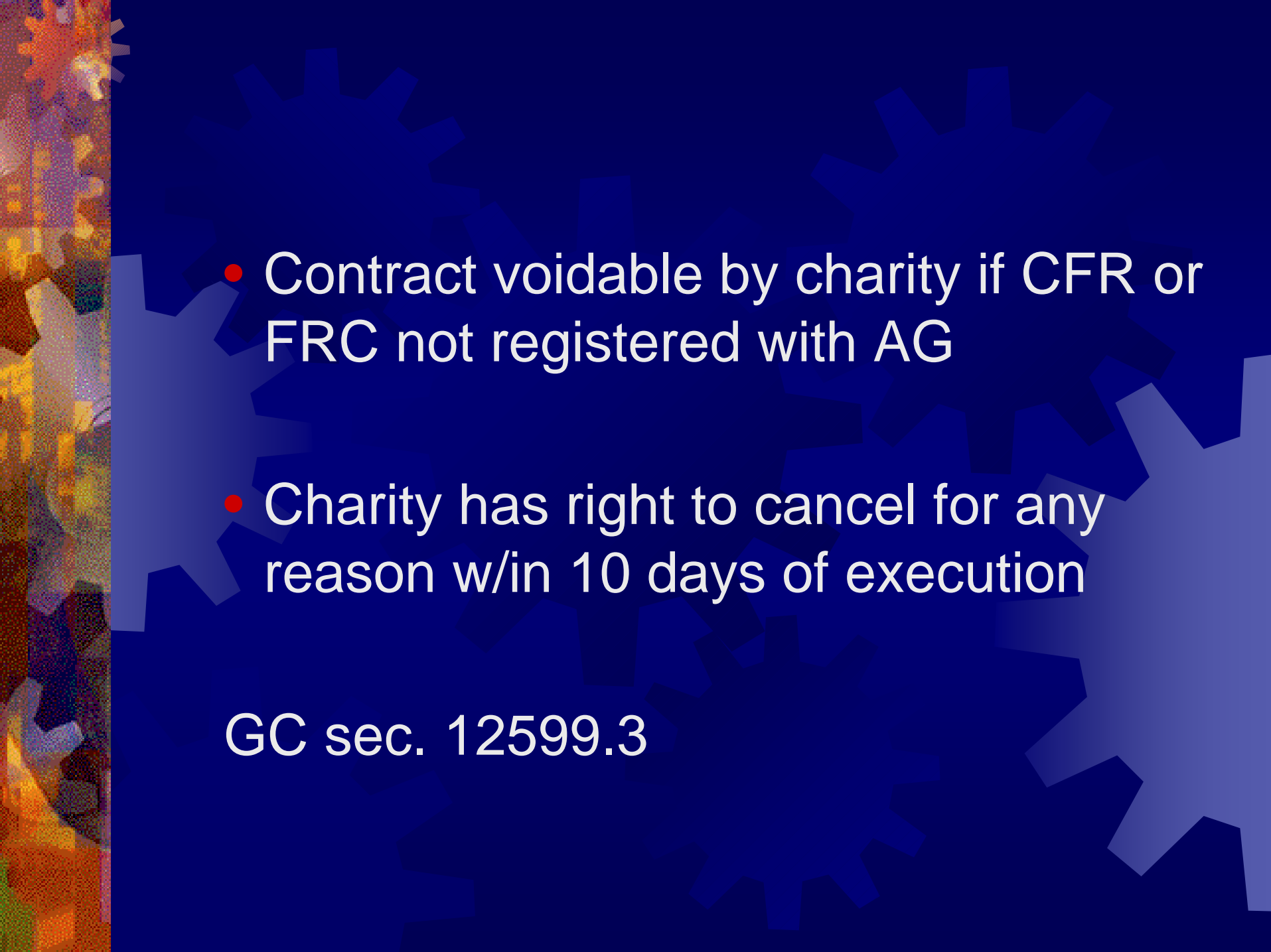
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 - ✴ Fee arrangement
 - ✴ Effective, start, and termination dates
 - ✴ Charity's cancellation rights

GC sec. 12599.1(f)

Fundraising Counsel Must Have Written Contracts

- ★ The written contract must contain or state:
 - ★ Charity's control of content and frequency of solicitation
 - ★ Statement that fundraising counsel will neither solicit, receive nor control donated funds, assets and property, or employ any other person to do so

- 
- Contract voidable by charity if CFR or FRC not registered with AG
 - Charity has right to cancel for any reason w/in 10 days of execution

GC sec. 12599.3

Specific Obligations When Fundraising

- ✱ No misrepresentations of purpose of charity or beneficiary
- ✱ Charity must exercise control over fundraising activities
 - ✱ Approval of written contracts
 - ✱ Assure no coercion
- ✱ No solicitation unless CFR, FC and charity are all registered with the AG

GC sec. 12599.6



Specific Obligations When Fundraising

- Within 5 working days, commercial fundraisers must deposit all contributions into a bank account controlled by nonprofit corporation or personally deliver contributions to nonprofit corporation

Misrepresentations and Other Prohibited Solicitation Acts

- ✱ Any violation of Govt. Code 12580-12599.7
- ✱ Unfair or deceptive acts or fraudulent conduct
- ✱ Using any name or symbol that falsely suggests a contribution is for a particular charitable organization
- ✱ Misrepresenting that a contribution is for a charitable organization or will be used for a charitable purpose when it is not true

Misrepresentations and Other Prohibited Solicitation Acts

- ✱ Representing that a person endorses a charitable solicitation when that person has not agreed to do so in writing
- ✱ Representing that goods or services have endorsements or characteristics that they do not have
- ✱ Representing that a person has endorsements or affiliations that they do not have

Misrepresentations and Other Prohibited Solicitation Acts

- ✱ Misrepresenting that registration constitutes an endorsement or approval by the Attorney General
- ✱ Misrepresenting **the net proceeds to be received by the charity**
- ✱ Issuing items that can be used for display on a motor vehicle that suggest affiliation with a group of public safety personnel

Misrepresentations and Other Prohibited Solicitation Acts

- ✱ Representing that contributions solicited will be given to another charity without its prior written consent
- ✱ Representing that event tickets will be donated for use by another person or entity unless:
 - ✱ Written commitments to accept tickets
 - ✱ Donated tickets do not exceed total ticket commitments or the seating capacity of the event site

Commercial Fundraisers Must Keep Records for 10 Years

- ★ Cash: date and amount
- ★ Non-cash: date, amount, name and address of donor
- ★ Name and address of each employee or agent involved

GC sec. 12599.7

Commercial Fundraisers Must Keep Records for 10 Years

- ☀ Documentation of all revenue received and expenses incurred
- ☀ All bank account numbers, names, and locations that received revenue deposited by commercial fundraiser



Attorney General's Website and Contacts

<http://ag.ca.gov/charities>

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James.Cordi@doj.ca.gov

www.leginfo.ca.gov - SB 1262