THE PRINCIPLES WORKBOOK:

Steering Your Board Toward Good Governance and Ethical Practice

A companion to **The Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations**

INDEPENDENT SECTOR
A vital voice for us all

BOARDSOURCE®
Building Effective Nonprofit Boards

WELCOME

Charities and foundations have long embraced the need for governance principles that enhance their organizations' impact and strengthen the public's confidence. Given the wonderful diversity of organizations, missions, and forms of activity that make up the charitable community, each organization is encouraged to determine how these principles can best be applied to their own situation. This Workbook, which is a companion to *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations** developed by the Panel on the Nonprofit Sector, provides a practical framework for organizations to examine and improve their governance practices in light of their own particular circumstances.

The Panel on the Nonprofit Sector was convened by Independent Sector in 2004 at the encouragement of the leaders of the U.S. Senate Finance Committee. Drawing on the expertise of thousands of stakeholders in or associated with the charitable community, it focused on strengthening the governance, transparency, and accountability of charitable organizations. In 2005 and 2006, the Panel issued reports that together recommended more than 150 actions that Congress, the Internal Revenue Service, and charitable organizations should take to improve governance and support ethical conduct.

In 2007, the Panel concentrated on strengthening good practices within the sector itself, and sought input from thousands of interested people to identify principles of ethical conduct, accountability, and transparency for charities and foundations. An advisory committee also studied more than 50 self-governance and self-regulatory systems as it developed the *Principles for Good Governance and Ethical Practice.* The Principles document describes 33 practices designed to help board members and staff leaders embrace the highest possible standards of good governance and ethical conduct.

Independent Sector has disseminated the Principles widely, encouraging all nonprofits and foundations to determine how best they should be applied to each organization. Thousands of organizations have already challenged themselves by examining their policies and practices in light of the Principles, often making changes to improve their governance.

This Workbook is designed to further assist organizations as they consider using the Principles to evaluate their own conduct. Independent Sector asked BoardSource to develop a tool to elucidate and expand the ideas behind each of the 33 principles, to make it easier for organizations to stimulate lively discussion around board governance and ethical practices.

We hope this tool will assist your efforts to assess the areas where you're doing well, identify where there is room for improvement, and then use your findings to make plans to improve your organization's operations and compliance.

Independent Sector and BoardSource share and applaud your commitment to governance excellence. That is why we created this tool and why we have named it a "Workbook." Governance is often hard work, and this tool can help your organization to delve into the critically important work of ensuring that together you are managing a first-rate organization.

Our best wishes,

Diana Aviv
Independent Sector
President and CEO

Linda Crompton
BoardSource
President and CEO

*Available for free download at Independent Sector's website. (www.independentsector.org)

WELCOME 1

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HOW TO USE THE PRINCIPLES WORKBOOK

This Workbook is designed to help nonprofits and foundations strengthen their governance and ethical practices. Organizations of all sizes, fields, and mission areas will find that it provides a platform on which they can build discussions that serve their unique needs and level of development.

Not every topic will apply to every organization, and an important part of the process will be for your organization—whether long-established or just starting up—to review the principles in order to prioritize implementation. Many organizations will find that they already follow—or go beyond—these principles. Others may wish to make changes in their current practices, and some may conclude that certain principles do not apply to their organization. What is vital is to assess and strengthen your practices and the Workbook supports that work.

Getting Started

First, identify a "Workbook champion." This may be the governance committee chair, the board chair, the chief executive, or another board or staff member. No matter who serves in this capacity, a champion plays an important role in acting as a clearinghouse for the project, making certain that tasks are allocated, and, ultimately, ensuring that the principles are implemented.

Discussion and implementation of the principles will be different for every organization. We recommend that the governance committee chair or board chair take the lead in advocating board discussion of the principles, in consultation with the chief executive. If your organization has a general counsel, he or she should play a leading role in reviewing your organization's policies and practices because each principle has related legal and compliance issues.

For some principles, it may be appropriate for staff to take the lead in reviewing and identifying the steps to take towards implementation. Some principles, particularly those in the section "Effective Governance," are uniquely the purview of the board, whereas others, such as those in "Responsible Fundraising," may involve both board and staff responsibilities. In all cases, however, whether discussion and implementation of any principle falls to the staff or to the board, the board's oversight of the policies and procedures expressed by the principles is paramount.

Organization of the Workbook

All of those involved in the discussion and review should familiarize themselves with the Workbook. You will note it is divided into the same four sections as the Principles:

- Legal Compliance and Public Disclosure
- Effective Governance
- Financial Oversight
- Responsible Fundraising

The Workbook addresses each of the 33 principles separately and features five main parts for each principle:

- Statement of the Principle
- Core Concepts
- Discussion Points
- Legal and Compliance Issues
- Resources

The components of each page are intended to work together to elucidate the principle and stimulate discussion, with the ultimate purpose of initiating action. On many pages, the Workbook refers to others of the 33 principles that may be relevant to the discussion.

Then, at the end of each section of the Workbook, you will find an additional worksheet that can be used to track your board's progress on each principle. The worksheets are discussed below.

Working Through the Principles

The Workbook is not intended to be implemented all at one time. The champion should prioritize the principles in order of importance for the organization and take the lead in deciding who needs to participate in each discussion. Some principles may have a greater urgency for some organizations because they deal with regulatory or compliance issues, while other principles may be important for strengthening operations and impact. See the Worksheets at the end of each section for ideas on how to prioritize.

Finding time to have multiple meaningful discussions about governance and accountability practices can be challenging because of competing organizational priorities, but the importance of such conversations on the board's and staff's agenda cannot be overstated. Though there is no one right way to use this Workbook, you might consider the following suggestions:

- Set aside some time at four board meetings and discuss one section at each meeting.
- If your board has an active committee structure, encourage board committees to discuss those principles most relevant to their work: The audit committee might discuss the principles related to Financial Oversight, for example, or the development committee might discuss the principles related to Responsible Fundraising.
- Plan a board retreat framed around the Workbook. Four board members—potentially members of your board's Governance Committee—could be assigned to lead a discussion around the principles in one of the four sections.
- Invite senior staff to a board meeting to discuss organizational policies and procedures identified in the principles.

To facilitate your discussion, each participant in the discussion should have a copy of the Workbook and the Principles, and review the principle and associated Workbook page in advance. Whether the discussion is led by the board chair, the chair of the governance committee, staff member, or a consultant, that person should use the questions to elicit a conversation about organizational practices or board practices vis-à-vis the principle at issue. It is helpful to take notes to record the discussion for later review.

Sample Workbook Page

One way to understand the Workbook is to dive into a page, learn what it includes, and start thinking about how your organization can utilize this tool.

As an example, below are the elements that illustrate Principle #2, from the Legal Compliance and Public Disclosure section, with comments to explain the purpose of each element:

PRINCIPLE 2

CODE OF ETHICS

The statement of the principle. Further clarification and expansion of each principle, as needed, is contained in the original Principles document, available for free download at www.independentsector.org.

A charitable organization should have a formally adopted, written code of ethics with which all of its directors or trustees, staff, and volunteers are familiar and to which they adhere.

The set of critical messages and implications to be derived from the principle.

Core Concepts

- Laws provide minimum requirements for boards and organizations to remain compliant.
- Ethical standards extend legal requirements—not just doing things right but doing the right thing.
- A code of ethics codifies the organization's beliefs and values to which it aspires.
- A code of ethics provides a code of conduct for all those who work with the organization.

Questions intended to prompt discussion about the principle, assess the policies and practices of your organization, and encourage your organization to take steps to identify where changes should be made. Your discussion need not be limited to these questions; instead, each set of questions should stimulate additional items as relevant to your organization's unique situation. The resulting discussion will help you move your organization toward applying the principle in the way that makes the most sense for your mission, size, and stage of development.

Discussion Points

1. Have we articulated and agreed on the values that drive our organization?
2. What steps should we take to integrate our code of ethics into the culture of the organization? How have we ensured that directors, staff, and volunteers are familiar with our code of ethics?
3. How well is our code of ethics reflected in the organization's policies and procedures?

Each principle has, to varying degrees, legal and compliance implications. While the Workbook is not intended as legal advice, this section is meant to raise your board's awareness of the nexus between each principle and the legal, regulatory, and compliance issues it raises.

Legal and Compliance Issues

- IRS Form 990 does not directly ask whether an organization has a code of ethics, but numerous questions relate to ethical standards and existence of policies.

Resources clarify the core concepts derived from the Principles and provide additional information for board and organizational development. Additional resources are available through the Independent Sector website (www.independentsector.org).

Resources

- Independent Sector Statement of Values and Code of Ethics
  www.independentsector.org/about/code.html
- Independent Sector Model Statement of Values and Code of Ethics
  www.independentsector.org/members/code_main.html
- The Nonprofit Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006
  www.boardsource.org/Bookstore.asp?category_id=0&Item=45

Progress Worksheets

Like any evaluative process, using the Workbook to examine your practices is not enough: organizations also need to take action. What steps will your board take in light of the discussions it has held? Recording those plans, including identifying an accountable party for each action step to ensure follow-through by an agreed-upon date, is a critical part of the process.

Strengthening your organization's effectiveness and accountability will likely be a process undertaken over time. At the end of each section of the Workbook, you will find Progress Worksheets to help you document the steps you've taken and identify what still needs to be done with regard to the recommendations of each principle and your discussion of its application.

The Progress Worksheets track the following information for each principle:

Priority. We suggest you set a priority between 1 and 3 for each principle based on whether

1. The item poses risks to the organization;
2. The item is important and needs some attention but the matters are not urgent; or
3. You are satisfied with the current status.

Compliance Status and Action Steps. As you examine how well you comply with each of the principles, you may identify actions that need to be taken. Describe your state of compliance at the time of your review of the principles and list the upcoming action steps your discussion identified. This will give the board and staff an overview of what has been accomplished prior to your review of the principles and what remains to be done.

Who Is Responsible. You should assign responsibility to an individual or a group for each of the principles.

Target Completion Date. Establish a timeline for implementing each action step.

Status. We encourage you to review this Worksheet on an ongoing basis in order to track progress against your action steps after the initial discussion. In some cases it may be as simple as stating that the task is complete, or the policy has been adopted. In other cases, it may be a reassessment of how the recommendation should be implemented, or a statement of how adjustments have been made. Keep in mind your target completion date as you track your status, so that you can assess your progress and hold yourselves accountable for taking action.

These Progress Worksheets are designed as a transparent process for communicating how your organization has addressed the principles. If you find that a particular principle is not applicable to your organization, or that the recommendations need to be modified to suit your situation, we encourage you to use the Worksheets to document your discussions and rationale.

A Progress Worksheet with sample entries is on page 8. Worksheet pages are included at the end of each of the four sections.

Sample Worksheet

PRINCIPLE	TOPIC	PRIORITY*	COMPLIANCE STATUS AND ACTION STEPS	WHO IS RESPONSIBLE	TARGET COMPLETION DATE	STATUS
1	Laws and Regulations	3	Bylaws were reviewed and updated last year.	Board chair and CEO	n/a	No additional action required
2	Code of Ethics	2	HR worked on this with staff. Board waiting to review and approve the policy.	CEO/HR staff	7/31/09	Board approved 7/1/2009.
3	Conflicts of Interest	1	Not all board members have signed the COI policy.	Board chair	6/30/09	Still waiting on three board members to sign the COI statement as of 7/1/2009. CFO actively following up with these board members.
4	"Whistle-blower" Policy	1	HR and CEO are working on revising the policy. Information needs to be incorporated in training materials.	CEO	8/31/09	Board approved revised policy 6/30/2009. Training materials not yet revised as of 7/1/2009. HR actively updating training materials. On schedule for 8/31/2009 target date.
5	Document Retention and Destruction	3	New policy developed and approved by board on 12/4/2008.	CFO	n/a	No additional action required.

***PRIORITY**

1. Needs immediate attention: may pose risk to the organization **2**. Needs attention but not urgent **3**. Satisfied with current status

Reference Grid

On pages 59–63 we have included a table that can be used as a handy reference to the 33 principles. The Grid is intended to help you understand where the principles overlap and how they relate to each other, which principles are specifically addressed in the IRS Form 990, which principles include or recommend policies, and which principles are required for legal compliance.

Ready to Plunge In?

The Principles for Good Governance and Ethical Practice recommend sound practices that every charitable organization should consider as a guide for strengthening its effectiveness and accountability. *The Principles Workbook: Steering Your Board Toward Good Governance and Ethical Practice* is intended to help your organization discuss your current practices in light of these recommendations and then identify the actions necessary to improve your operations. To move our community toward greater effectiveness and accountability, it is incumbent upon individual nonprofit and foundation leaders to take the first step toward self-awareness. It is our profound hope that the Workbook provides the means to approach that self-awareness: the right degree of initiative, a helpful and motivating tool, and assistance in facilitating the kind of lively discussions that lead to focused plans for change. We are pleased to help you on this critically important journey.

Legal Compliance
and
Public Disclosure

PRINCIPLE 1

LAWS AND REGULATIONS

A charitable organization must comply with all applicable federal laws and regulations, as well as applicable laws and regulations of the states and the local jurisdictions in which it is based or operates. If the organization conducts programs outside the United States, it must also abide by applicable international laws, regulations, and conventions that are legally binding on the United States.

Core Concepts

- The board must be familiar with the hierarchy of laws and the legal framework within which the organization functions.

Discussion Points

1. Do our orientation materials provide new board members with sufficient information about board members' collective and individual legal responsibilities?
2. Legal compliance is an ongoing process. What steps have we taken to ensure we stay current and are proactive about our organization's legal obligations?
3. Does the board ask for regular briefings on any significant legal issues facing the organization?
4. Whom do we rely on for legal advice? Is this sufficient and appropriate for the size and complexity of our organization?
   - Board members?
   - Legal counsel (whether in-house or outside)?
   - Resources for charitable and nonprofit organizations?

Legal and Compliance Issues

- Nonprofits are covered under federal, state, and local laws and jurisdictions.
- An organization's bylaws comprise a legal document describing the board's structure and practices.
- IRS Form 990 inquires about existing policies and procedures relating to federal and state laws.

Resources

- Access to nonprofit corporation state laws *www.law.cornell.edu/states/listing.html*
- "Life Cycle of an Exempt Organization" *www.irs.gov/charities/article/0,,id=169727,00.html*
- Stay Exempt: Tax Basics for Exempt Organizations *www.stayexempt.org/home_virtual_ws.html*
- State and local bar associations *www.hg.org/northam-bar.html*
- National Association of State Charity Officials *www.nasconet.org*

RELATED PRINCIPLES

6 Protection of Assets

15 Board Education and Communication

22 Annual Budget, Financial Performance, and Investments

PRINCIPLE 2

CODE OF ETHICS

A charitable organization should have a formally adopted, written code of ethics with which all of its directors or trustees, staff, and volunteers are familiar and to which they adhere.

Core Concepts

- Laws provide minimum requirements for boards and organizations to remain compliant.
- Ethical standards extend legal requirements—not just doing things right but doing the right thing.
- A code of ethics codifies the organization's beliefs and values to which it aspires.
- A code of ethics provides a code of conduct for all those who work with the organization.

Discussion Points

1. Have we articulated and agreed on the values that drive our organization?
2. What steps should we take to integrate our code of ethics into the culture of the organization? How have we ensured that directors, staff, and volunteers are familiar with our code of ethics?
3. How well is our code of ethics reflected in the organization's policies and procedures?

Legal and Compliance Issues

- IRS Form 990 does not directly ask whether an organization has a code of ethics, but numerous questions relate to ethical standards and existence of policies.

Resources

- Independent Sector Statement of Values and Code of Ethics
  www.independentsector.org/about/code.html
- Independent Sector Model Statement of Values and Code of Ethics
  www.independentsector.org/members/code_main.html
- The Nonprofit Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006
  www.boardsource.org/Bookstore.asp?category_id=0&Item=45

RELATED PRINCIPLES

15 Board Education and Communication

30 Gift Acceptance Policies

PRINCIPLE 3

CONFLICTS OF INTEREST

A charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest, or the appearance thereof, within the organization and the board are appropriately managed through disclosure, recusal, or other means.

Core Concepts

- Conflicts of interest can be potential, perceived, or material, and all need attention.
- Not all conflicts of interest are illegal or unethical. They are often unavoidable.
- How the board handles conflicts of interest is vitally important.
- Only independent board members (see principle #12) should vote when a conflict of interest occurs.
- Board members with a material conflict of interest should recuse themselves from board discussions and votes.
- A written conflict-of-interest policy and corresponding disclosure form serve as the guide for addressing conflict situations.

Discussion Points

1. What examples do we know where organizations were "damaged" by issues related to conflict of interest, or where a potentially damaging situation was handled well? Why must we be concerned about conflicts of interest?
2. What types of conflicts of interest might affect our organization, remembering conflicts of interest are not only financial in nature, as in supervising family members or soliciting the same funder for two different organizations?
3. What conflicts have we dealt with in the past and what did we learn from past experience?
4. What steps do we currently take to ensure that conflicts are handled appropriately? Are there additional steps we should be taking?
5. Are we proactive or reactive when it comes to conflicts of interest?
6. Do we have a conflict-of-interest policy, including an annual disclosure form? When did we last review it? How do we enforce it (e.g., cover in orientation, signed annually by all board members)?

Legal and Compliance Issues

- IRS Form 990 asks whether the organization
  - has a written conflict-of-interest policy
  - requires directors, officers, key employees, and others to annually disclose interests that could give rise to conflicts
  - regularly monitors and enforces compliance with the policy
- IRS Form 990 also requires disclosure of certain transactions with current or former directors, officers, and key employees
- Board members must meet certain standards of legal conduct, including the duty of loyalty—which means putting personal and professional interests aside for the good of the organization.

3
(continued)

CONFLICTS OF INTEREST

Resources

- Independent Sector Conflict-of-Interest Policy
  www.independentsector.org/about/ISConflict_Interest.pdf
- Managing Conflicts of Interest: A Primer for Nonprofit Boards by Daniel Kurtz and Sarah E. Paul. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?Item=182*
- "Conflicts of Interest at Foundations: Avoiding the Bad and Managing the Good," A BoardSource White Paper *www.boardsource.org/dl.asp?document_id=25*
- The Nonprofit Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?category_id=0&Item=45*. Sample conflict-of-interest policies are available here *www.boardsource.org/Bookstore.asp?Type=epolicy&Item=1025*

RELATED PRINCIPLES

6 Protection of Assets
12 Board Independence

PRINCIPLE 4

"WHISTLEBLOWER" POLICY

A charitable organization should establish and implement policies and procedures that enable individuals to come forward with information on illegal practices or violations of organizational policies. This "whistleblower" policy should specify that the organization will not retaliate against, and will protect the confidentiality of, individuals who make good-faith reports.

Core Concepts

- Every organization should have a confidential process for addressing complaints or reports of suspected illegal or unethical activities.
- Staff and volunteers need to feel safe to report unacceptable acts.
- Retaliation against whistleblowers can be a criminal act that applies to all organizations.
- Appropriate internal controls can help alleviate the occurrence of unacceptable acts.

Discussion Points

1. Do we have a process in place whereby individuals can report concerns without fear of retaliation? If not, what process should we implement? If so, does this process need to be strengthened? How?
2. Do our orientation and training materials include information about the process and to whom reports of suspected wrongdoing should be made?
3. Do we understand fully what "retaliation" means?

Legal and Compliance Issues

- The Sarbanes-Oxley Act (SOX), Section 1107, makes it a federal crime to retaliate against whistleblowers in certain circumstances.
- IRS Form 990 asks whether the organization has a written whistleblower policy.

Resources

- Independent Sector Financial Responsibility Policy *www.independentsector.org/about/finresp.html*
- Sarbanes-Oxley Section 1107 *www.sox-online.com/soxact.html#sec1107*
- The Nonprofit Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?category_id=0&Item=45* Sample whistleblower policies are available at *www.boardsource.org/Bookstore.asp?Type=epolicy&Item=1025*
- Whistleblower Policies and Procedures, Council on Foundations *www.cof.org/Council/content.cfm?ItemNumber=4826*
- "The Whistleblower: Policy Challenges for Nonprofits" by Scott Harshbarger and Amy Crafts, The Nonprofit Quarterly *www.nonprofitquarterly.org/content/view/167/1/*
- "Whistleblower Protections in the Nonprofit Sector" by Jason M. Zuckerman, The Nonprofit Risk Management Center *www.nonprofitrisk.org/library/articles/employment091005.shtml*

RELATED PRINCIPLES

6 Protection of Assets

PRINCIPLE 5

DOCUMENT RETENTION AND DESTRUCTION

A charitable organization should establish and implement policies and procedures to protect and preserve the organization's important documents and business records.

Core Concepts

- The board should understand the difference between document destruction during an investigation and document purging as a normal management process.
- A schedule for document retention is a necessary tool to ensure the retention of documents needed for legal or business purposes.
- The board should understand how an official investigation is defined and how to ensure the organization abides by the laws.
- An efficient filing system is critical for all organizations.

Discussion Points

1. How can we assess whether we've established the necessary processes and procedures for managing and maintaining documents and then determine whether these steps are currently being followed?
2. How recently have we done a "document audit" in order to verify that all organizational documents are accessible and accounted for?
3. Do our document retention and destruction policies cover both our electronic and physical documents?
4. If we were ever under investigation, or if there is even a potential of being investigated, are we confident that we understand what we must do at that point?
5. Documents can provide some protection against allegations of wrongdoing. When assessing the risks our organization faces, have we considered what documents might assist in managing or minimizing these risks?

Legal and Compliance Issues

- The document destruction clause in the Sarbanes-Oxley Act of 2004 in Section 802 applies to nonprofit organizations.
- It can be illegal to destroy any documents if the organization expects to be investigated or is already under official investigation.
- IRS Form 990 inquires whether an organization has a document retention and destruction policy.

Resources

- Independent Sector Records Retention Policy *www.independentsector.org/about/ISRecordsRetentionPolicy.pdf*
- Sarbanes-Oxley Section 802 *www.sox-online.com/act_section_802.html*
- The Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?category_id=0&Item=45*

RELATED PRINCIPLES

6 Protection of Assets

18 Review of Governing Documents

PRINCIPLE 6

PROTECTION OF ASSETS

A charitable organization's board should ensure that the organization has adequate plans to protect its assets—its property, financial and human resources, programmatic content and material, and its integrity and reputation—against damage or loss. The board should review regularly the organization's need for general liability and directors' and officers' liability insurance, as well as take other actions necessary to mitigate risks.

Core Concepts

- The board is the steward of the organizational assets.
- Adequate risk management is essential for every organization.
- Risk can be assumed, eliminated, protected, or delegated.
- Liability protection needs to cover the organization, the board, and those associated with the organization.

Discussion Points

1. How well do we understand and fulfill our responsibility to
   - Understand risks our organization faces?
   - Periodically review risks?
   - Establish systems to manage risks?
2. Do board recruitment and orientation materials adequately describe areas where board members have potential personal liability?
3. All organizations face risks, but the level of risk is based on the nature and complexity of the organization.
   - Is the amount of time we spend to assess and manage risks well matched to the complexity of the organization?
   - Does the nature of our organization create a heightened need for policies and procedures to protect employees, clients, or consumers of our services?
4. Has the board reviewed whether the current system of checks and balances is adequate to protect the organization against fraud or embezzlement?

6 (continued)

PROTECTION OF ASSETS

Legal and Compliance Issues

- The full board is responsible for overseeing the organization's activities.
- Individual board members have fiduciary duties to the organization and can be personally liable for breaches of those duties.
- Federal and state volunteer immunity laws provide broad liability protection for volunteers (including uncompensated board members) acting within the scope of their responsibilities but cannot prevent lawsuits.
- Boards can protect their members via an indemnification clause (if allowed by the state laws) as long as the assets are sufficient to cover the expenses.
- Directors' and Officers' insurance can provide coverage for liability expenses as well as defense costs.

Resources

- The Nonprofit Legal Landscape by Ober|Kaler. BoardSource, 2005 *www.boardsource.org/Bookstore.asp?category_id=0&Item=162*
- The Nonprofit Risk Management Center *www.nonprofitrisk.org*

RELATED PRINCIPLES

All Other Principles

PRINCIPLE 7

AVAILABILITY OF INFORMATION TO THE PUBLIC

A charitable organization should make information about its operations, including its governance, finances, programs, and activities, widely available to the public. Charitable organizations also should consider making information available on the methods they use to evaluate the outcomes of their work and sharing the results of those evaluations.

Core Concepts

- Transparency is essential to earn the public's trust.
- The board should understand what must be public information, what should be shared with the public, and what must be guarded as confidential information.
- Posting the IRS Form 990 on the Internet is the easiest way to meet the IRS public availability requirement.
- A professional, clear, accurate website promotes transparency and can act as a central repository for organizational information.

Discussion Points

1. Have we established procedures to make sure our staff complies with the legal requirements for making certain IRS documents available to the public?
2. Are there other organizational and governance documents that we want to make available to the public as a matter of transparency?
3. What are some of the benefits of becoming more transparent and sharing organizational outcomes?
4. Has our organization made a "commitment" to be transparent? Have we identified other organizations that could serve as a model for us?
5. What steps can we take to optimize our website as a way to communicate and provide information with the public about our organization? What other methods of communication are we using or should we consider?
6. Traditionally, organizations have used an annual report to share important information. Have we considered all the options to assess what is the most cost-effective and useful way to share information with the public?

7 (continued)

AVAILABILITY OF INFORMATION TO THE PUBLIC

Legal and Compliance Issues

- IRS Forms 990 and 990-T from the last three years must be available to anyone who asks for them.
- IRS Form 1023, the application form for tax exemption for charities, is also a public document.
- If the organization is a "covered entity" under the Health Insurance Portability and Accountability Act (HIPAA) rules, it needs guidelines for handling confidential documents.
- IRS Form 990 inquires about the process of making governing documents available to the public.

Resources

- IRS reporting requirements *www.irs.gov/charities/article/0,,id=96581,00.html*
- Stay Exempt: Tax Basics for Exempt Organizations *www.stayexempt.org/home_virtual_ws.html*
- HIPAA Covered Entity Charts *www.cms.hhs.gov/hipaageninfo/downloads/coveredentitycharts.pdf*

RELATED PRINCIPLES

1 Laws and Regulations
3 Conflicts of Interest
19 Review of Mission and Goals
27 Accuracy and Truthfulness of Fundraising Materials
33 Donor Privacy

PROGRESS WORKSHEET

Section One: *Legal Compliance and Public Disclosure*

PRINCIPLE/ TOPIC	PRIORITY*	COMPLIANCE STATUS & ACTION STEPS	WHO IS RESPONSIBLE	TARGET COMPLETION DATE	STATUS
1 Laws and Regulations					
2 Code of Ethics					
3 Conflicts of Interest					
4 "Whistleblower" Policy					
5 Document Retention and Destruction					
6 Protection of Assets					
7 Availability of Information to the Public					

***PRIORITY**

1. Needs immediate attention: may pose risk to the organization **2**. Needs attention but not urgent **3**. Satisfied with current status

Effective Governance

PRINCIPLE 8

BOARD RESPONSIBILITIES

A charitable organization must have a governing body that is responsible for reviewing and approving the organization's mission and strategic direction, annual budget and key financial transactions, compensation practices and policies, and fiscal and governance policies.

Core Concepts

- The board is responsible for governing and overseeing the affairs of the organization.
- The organization's mission and strategic direction are set by the board in conjunction with the CEO and senior staff, and the results should then be used to guide decisions.
- Clear policies (compensation, fiscal, and governance) are critical to guide and protect the board and the organization.

Discussion Points

1. Are we all aware of our collective board responsibilities? If not, how can we increase awareness of these responsibilities?
2. The mission should drive the organization's strategic direction. Therefore, it is important that the board, CEO, and senior staff agree on how to further the organization's mission. How close are we to this ideal? Does the board regularly review and approve any changes to the organization's mission?
3. One of the ways the board protects the organization's assets is by overseeing its fiscal affairs. How recently have we evaluated our performance in this area and looked for ways we could strengthen our oversight role related to the following?
   - Reviewing and approving the organization's annual budget
   - Approving key financial transactions
   - Approving fiscal and governance policies
   - Establishing compensation policies and practices
4. How has the board adapted our policies as the organization has changed? What more might we need to do?

Legal and Compliance Issues

- All state laws require nonprofits incorporated in their state to have a board of directors.
- IRS Form 990 contains a series of questions concerning the board and its governance practices—including a question asking whether the IRS Form 990 was provided to the full board for review.

Resources

- Nonprofit Governance by Berit M. Lakey. BoardSource, 2000
  www.boardsource.org/Bookstore.asp?category_id=0&Item=72
- Ten Basic Responsibilities of Nonprofit Boards, Second Edition by Richard T. Ingram. BoardSource, 2009
  www.boardsource.org/Bookstore.asp?Item=112

RELATED PRINCIPLES

All Other Principles

PRINCIPLE 9

BOARD MEETINGS

The board of a charitable organization should meet regularly enough to conduct its business and fulfill its duties.

Core Concepts

- Meeting frequency should be based on the needs of the organization. Each board should determine its own meeting frequency.
- The optimal number of meetings changes during the different phases of the organization's and board's life cycle.
- Having committees and task forces is an effective way for boards to function more efficiently and prepare for full board meetings.

Discussion Points

1. Most organizations define their own requirements related to meetings and notifying board members about meetings in their bylaws. Do we know what these bylaw requirements are, and are we following these requirements?
2. Is the length and frequency of meetings presently adequate for our board to fulfill our basic governance and oversight responsibilities as well as allowing time for strategic thinking and adequate discussion of issues?
3. New technology provides new ways of communicating as alternatives to holding face-to-face meetings. Have we considered the benefits of using technology to facilitate the work of our board? Have we modified our governing documents and checked applicable state laws to address any legal issues associated with meeting by teleconference or voting electronically?
4. Committees are often formed to facilitate the work of the board. If our board uses a committee structure:
   - Do we periodically review the performance of our committees and assess how well this structure is working?
   - Have we built provisions into our bylaws to safeguard against the abuse of power? Specifically, the bylaws should clarify the limits to authority for the executive committee. Are we following the letter of "the law" as well as maintaining good governance practices in our use of committees?

9 (continued)

BOARD MEETINGS

Legal and Compliance Issues

- State laws determine the minimum number of meetings a nonprofit must conduct annually.
- State laws define the minimum quorum requirements. The board may be stricter about its own requirements.
- State laws regulate whether board meetings can take place without all members being in the same room at the same time. Many states do not allow electronic voting in board meetings.
- A quorum must be present before any board business can be transacted.
- If the board has an executive committee, that committee's decisions should be reported to the full board in its next board meeting.
- State sunshine laws define who must follow the open meeting regulations and the procedure for doing so.
- IRS Form 990 inquires whether board meetings and committee meetings acting on behalf of the governing body are documented.

Resources

- State sunshine laws *www.rcfp.org/ogg/index.php*
- National Association of Parliamentarians *www.parliamentarians.org*
- Meet Smarter, Second Edition by Outi Flynn. BoardSource, 2009 *www.boardsource.org/Bookstore.asp?category_id=0&Item=157*

RELATED PRINCIPLE
18 Review of Governing Documents

PRINCIPLE 10

BOARD SIZE AND STRUCTURE

The board of a charitable organization should establish its own size and structure and review these periodically. The board should have enough members to allow for full deliberation and diversity of thinking on governance and other organizational matters. Except for very small organizations, this generally means that the board should have at least five members.

Core Concepts

- The size of the board should be based on the needs of the organization. There is no universal "best" size.
- The primary guide for determining board size is that function defines the form, which changes over time. Board structure and size should be periodically reviewed as the needs of the organization evolve.
- Numerous factors influence the size of the board: work load, legal mandates, phase in the life cycle, need for diversity, and maintaining a manageable group.

Discussion Points

1. When determining the size of our board, what factors should we consider?
2. When should we next review the size and structure of the board?
   - Do we know when our board size and structure was last reviewed?
   - How should we approach a review?
3. What are some pitfalls our board might experience, given its current size? What processes can we implement to avoid these pitfalls?
4. Do we know the legal requirements for board size in our state?
5. The bylaws should establish the size of the board. Have we considered the benefits of setting a range for our board?

Legal and Compliance Issues

- State laws define the minimum size for a nonprofit board.
- External entities may mandate a specific size for a board (government agencies, parent organizations, membership.)
- IRS Form 990 asks organizations to provide the number of independent directors on the board.

Resources

- BoardSource Governance Index 2007 *www.boardsource.org/dl.asp?document_id=553*
- Nonprofit Governance in the United States, Urban Institute *www.urban.org/publications/411479.html*
- Structures and Practices of Nonprofit Boards by Charles E. Dambach, Melissa Davis, and Robert L. Gale. BoardSource, 2009 *www.boardsource.org/Bookstore.asp?category_id=0&Item=114*

RELATED PRINCIPLES

12 Board Independence

PRINCIPLE 11

BOARD DIVERSITY

The board of a charitable organization should include members with the diverse background (including, but not limited to, ethnic, racial, and gender perspectives), experience, and organizational and financial skills necessary to advance the organization's mission.

Core Concepts

- A board should have a variety of skills, expertise, backgrounds, and perspectives in order to make informed decisions.
- Every board should have expertise in budgeting and financial management.
- Family foundations should balance the desire to involve family members and honor donors' intent with the need for professional expertise and diversity.

Discussion Points

1. Have we identified the ideal mix of skills, knowledge, experience (professional and personal), gender, and ethnicity for our board?
2. What steps can we take to be more successful at recruiting individuals to join our board that will close the gap between our present and ideal board?
3. Have we taken steps to ensure that we have adequate financial expertise either on or available to the board?
4. Does the composition of our board affect our ability to secure funding? If so, have we adequately addressed this need?

Legal and Compliance Issues

- There are no laws that directly define the composition of the board. Certain state laws have provisions defining the minimum level of independent members on the board.
- In membership organizations, the articles of incorporation need to define the role of members in electing board members.

Resources

- BoardSource Governance Index 2007 *www.boardsource.org/dl.asp?document_id=553*
- Nonprofit Governance in the United States, Urban Institute *www.urban.org/publications/411479.html*
- The Board Building Cycle by Berit M. Lakey. BoardSource, 2007 *www.boardsource.org/Bookstore.asp?category_id=0&Item=1074*

RELATED PRINCIPLES

10 Board Size and Structure
12 Board Independence
21 Financial Records
22 Annual Budget, Financial Performance, and Investments

PRINCIPLE 12

BOARD INDEPENDENCE

A substantial majority of the board of a public charity, usually meaning at least two-thirds of the members, should be independent. Independent members should not: (1) be compensated by the organization as employees or independent contractors; (2) have their compensation determined by individuals who are compensated by the organization; (3) receive, directly or indirectly, material financial benefits from the organization except as a member of the charitable class served by the organization; or (4) be related to anyone described above (as a spouse, sibling, parent, or child) or reside with any person so described.

Core Concepts

- The "duty of loyalty" requires board members to put the interests of the organization above personal interests.
- A nepotism policy, forbidding favoritism shown to family members and friends, could help some organizations promote independence among board members and senior staff.

Discussion Points

1. Do we adequately understand how the IRS (and state law, if applicable) define independent members? Have we taken the necessary steps to document that a substantial majority of the board fits the criteria?
2. What are the dangers of "interlocking financial relationships" among board members, and how could these financial conflicts of interest affect the long-term success of an organization?
3. Do we understand the types of organizations that are exempt from this principle and have we determined whether this applies to our organization? (If not sure about the applicability, please see the reference section of this clause in the Reference Edition of the Principles *www.nonprofitpanel.org/report/principles/Principles_Reference.pdf*)
4. If our organization has reasonably determined it is appropriate not to have a majority of independent board members (for example, we are a family foundation), what steps have we taken or should we be taking to fulfill our responsibility to provide independent oversight?

Legal and Compliance Issues

- The IRS Form 990 inquires how many independent board members the organization has.
- The IRS defines the term "independent" board member.
- Some state laws set the minimum limit for independent board members.

Resources

- IRS definition for board member independence for 990 reporting purposes *www.irs.gov/pub/irs-pdf/i990.pdf*
- The Board Building Cycle by Berit M. Lakey. BoardSource, 2007 *www.boardsource.org/Bookstore.asp?category_id=0&Item=1074*

Related Principles

3 Conflicts of Interest
10 Board Size and Structure
20 Board Compensation

PRINCIPLE 13

CEO EVALUATION AND COMPENSATION

The board should hire, oversee, and annually evaluate the performance of the chief executive officer of the organization, and should conduct such an evaluation prior to any change in that officer's compensation, unless there is a multi-year contract in force or the change consists solely of routine adjustments for inflation or cost of living.

Core Concepts

- One of the board's primary responsibilities is to select and supervise the CEO, thereby entrusting to him or her the daily management of the organization.
- The board is the supervisor of the chief executive and in that capacity should evaluate the chief executive's performance annually.
- Performance evaluation should be a formal, documented process that is based on a clear job description and includes mutually agreed-upon annual goals.
- Compensation must be reasonable but competitive enough to attract and retain highly qualified individuals.
- Compensation adjustments should be based on performance and tied to predetermined performance goals.

Discussion Points

1. In the board's role as the supervisor of the CEO, what type of support and supervision do we provide to the chief executive?
2. If the board designates a portion of its responsibility to evaluate and compensate the CEO to a committee, what responsibilities must be retained by the full board?
3. Do we use an adequate process to evaluate the performance of the CEO?
   - Is the full board involved and informed?
   - Is the CEO's performance always evaluated prior to an increase in compensation?
4. Do we understand and follow the appropriate steps to ensure that the compensation package paid to the chief executive is reasonable?
5. Have we established a process and documented the information that supports our compensation decisions?

13 (continued)

CEO EVALUATION AND COMPENSATION

Legal and Compliance Issues

- Written annual performance assessment can serve as a legal document during employment disagreements.
- The payment of excessive compensation can jeopardize an organization's IRS tax exemption.
- Under the Intermediate Sanctions and foundation excise tax provisions, the IRS can impose tax penalties on CEOs of 501(c)(3) and 501(c)(4) organizations who receive excessive compensation and on board members who approve such compensation knowing it to be excessive.
- The Intermediate Sanctions regulations set out a process for awarding CEO compensation that can establish a presumption of reasonableness in the event of an IRS audit. This process requires having the decision made by independent board members, using comparable market data to establish reasonableness, and documenting the board decision in minutes. Although not specifically applicable to private foundations, this process under the Intermediate Sanctions regulations can also help establish the reasonableness of private foundation CEO compensation.
- The Intermediate Sanctions regulations also establish a limited protection for initial compensation decisions that follow certain procedures. There is no comparable provision for private foundations.
- On the IRS Form 990, the organization must list the compensation of the CEO, as well as other officers, directors, and key employees earning over $100,000. Schedule J must be filled out for those individuals whose total compensation exceeds $150,000.
- On IRS Form 990-PF, the foundation must list the compensation of the CEO, as well as other officers, directors, trustees, and foundation managers.

Resources

- Intermediate Sanctions *www.irs.gov/charities/charitable/article/0,,id=123298,00.html*
- IRS Definition of key employees *www.irs.gov/charities/article/0,,id=185428,00.html*
- Chief Executive Transitions by Don Tebbe. BoardSource, 2008 *www.boardsource.org/Bookstore.asp?Type=new&Item=1086*
- Dollars and Sense by Brian H. Vogel and Charles W. Quatt. BoardSource, 2005 *www.boardsource.org/Bookstore.asp?category_id=0&Item=166*
- Assessment of the Chief Executive, Online tool. BoardSource, 2005 *www.boardsource.org/Bookstore.asp?Item=168*

Related Principles

12 Board Independence
14 Separation of CEO, Board Chair, and Board Treasurer Roles

PRINCIPLE 14

SEPARATION OF CEO, BOARD CHAIR, AND BOARD TREASURER ROLES

The board of a charitable organization that has paid staff should ensure that the positions of chief staff officer, board chair, and board treasurer are held by separate individuals. Organizations without paid staff should ensure that the positions of board chair and treasurer are held by separate individuals.

Core Concepts

- Segregation of duties is a key element in internal controls.
- The chief executive manages the daily operations and the chair leads the board in its governance duties. Unless the board determines it is in the best interests of the organization to have the chief executive serve as board chair, a different person should hold each position. If one person holds both positions, the board should appoint another board member to lead on any issues that require a separation of duties, such as reviewing the compensation of the chief executive.

Discussion Points

1. Every organization needs a system of checks and balances to ensure that the organization's best interests take precedence. Do we have any individual with multiple roles that may compromise our organization's system of checks and balances?
2. If our chair carries on the functions of the chief executive, do other board members take on the responsibility for reviewing the chief executive's performance and potential compensation?
3. Do we have a plan to separate all the board and staff functions as soon as our organization has the capacity to do so?

Legal and Compliance Issues

- Some state laws and bylaws specifically forbid the same person from serving as the president and the treasurer.

Resources

- Managing Conflicts of Interest: A Primer for Nonprofit Boards by Daniel L. Kurtz and Sarah E. Paul. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?Item=182*

RELATED PRINCIPLES

1 Laws and Regulations
3 Conflicts of Interest
12 Board Independence

PRINCIPLE 15

BOARD EDUCATION AND COMMUNICATION

The board should establish an effective, systematic process for educating and communicating with board members to ensure that they are aware of their legal and ethical responsibilities, are knowledgeable about the programs and activities of the organization, and can carry out their oversight functions effectively.

Core Concepts

- Every board member should have a clear job description.
- Thorough orientation provides new board members with an understanding of their fiduciary responsibilities and establishes expectations for board performance.
- Every board member should be familiar with the activities and purpose of the organization.
- Board development and education should be an ongoing process.

Discussion Points

1. How effectively do we orient new board members? Do we do it orally and in writing?
2. What steps have we taken to provide necessary training and information to our board members? How can we provide additional resources to our board members?
3. Have we adequately informed board members about the personal liability they have for the board's actions and what protection is available to them?
4. Boards can learn by understanding leading practices in nonprofit board governance. Do our board members have a way of assessing their performance and practices against common practices for nonprofit boards?
5. Do our board members have the necessary information about programs and activities to make informed decisions? What can we do to improve this process?
6. Do board members individually take responsibility for coming to board meetings prepared to discuss issues on the agenda? Do we need to take action to improve this?

Legal and Compliance Issues

- To protect themselves against liability, board members should know their legal obligations.
- In most states, corporate statutes enumerate the legal responsibilities associated with board service.

Resources

- The Board Building Cycle by Berit M. Lakey. BoardSource, 2007
  www.boardsource.org/Bookstore.asp?category_id=0&Item=1074
- Legal Responsibilities of Nonprofit Boards by Bruce R. Hopkins. BoardSource, 2009
  www.boardsource.org/Bookstore.asp?category_id=0&Item=116

RELATED PRINCIPLES

6 Protection of Assets
18 Review of Governing Documents
19 Review of Mission and Goals
21 Financial Records
22 Annual Budget, Financial Performance, and Investments

PRINCIPLE 16

EVALUATION OF BOARD PERFORMANCE

Board members should evaluate their performance as a group and as individuals no less frequently than every three years, and should have clear procedures for removing board members who are unable to fulfill their responsibilities.

Core Concepts

- It is important to establish guidelines for duties and responsibilities of board members.
- Board self-assessment is a process that allows the board and individual board members to evaluate their understanding of their responsibilities and how well they meet their expectations.
- Before renewing the term of a board member, his or her performance should be assessed.

Discussion Points

1. It is recommended that boards assess their performance either annually or at least every two to three years. What schedule, process, and tools are best suited to the needs of our organization? Do we know what is considered best practice and what steps similar organizations follow?
2. What steps can we take to ensure that information from the evaluation is used to improve the performance of the board?
3. Who or what committee is responsible for initiating and leading board development and assessment? Does it have the necessary resources and authority to fulfill its responsibilities?
4. Every board should have clearly established guidelines that outline the duties and responsibilities of individual board members. Are board members held accountable to these standards? Do we have a process for removing nonperforming board members?

Legal and Compliance Issues

- Some accreditation agencies require boards to assess their performance.
- The bylaws should state the reasons and the process for removing a board member.
- Removing nonperforming board members usually requires the action of the full board.

Resources

- Board Self-Assessment, Online tool. BoardSource, 2009 *www.boardsource.org/Bookstore.asp?Item=184*

RELATED PRINCIPLES

8 Board Responsibilities
15 Board Education and Communication
17 Board Member Term Limits

PRINCIPLE 17

BOARD MEMBER TERM LIMITS

The board should establish clear policies and procedures setting the length of terms and the number of consecutive terms a board member may serve.

Core Concepts

- Term limits provide natural turnover on the board.
- Staggered term limits prevent the entire board from changing at the same time, providing a way to preserve institutional memory.
- Term limits should be enforced in a systematic manner.

Discussion Points

1. What are the pros and cons of term limits? What is best for our organization? How well is our current system working?
2. If we have chosen not to adopt term limits, what safeguards have we adopted to assist us in maintaining a full board of actively engaged members?
3. What is our process for evaluating and removing individuals who are not fulfilling their responsibilities?
4. What can we do to keep board members who have completed their board service engaged in the organization's programs and services?
5. As part of our recruitment process, what can we do to involve prospective members on committees or task forces?
6. How do we acknowledge and show appreciation for those who have served the organization?

Legal and Compliance Issues

- The bylaws should define the length of terms and the number of consecutive terms a board member can serve.

Resources

- The Nonprofit Board's Guide to Bylaws by D. Benson Tesdahl. BoardSource, 2003
  www.boardsource.org/Bookstore.asp?category_id=0&Item=127
- The Nonprofit Board Answer Book by BoardSource, 2007
  www.boardsource.org/Bookstore.asp?category_id=0&Item=1075

RELATED PRINCIPLES

10 Board Size and Structure
11 Board Diversity
16 Evaluation of Board Performance

PRINCIPLE 18

REVIEW OF GOVERNING DOCUMENTS

The board should review organizational and governing instruments no less frequently than every five years.

Core Concepts

- As the organization evolves, articles of incorporation, bylaws, and other governing instruments should be reviewed and may need to be updated.

Discussion Points

1. Organizational and governance instruments are intended to guide and inform the board. Do we have access to pertinent documents to aid decision making?
4. Do we take responsibility for amending our governing documents in a timely manner to avoid putting the organization at risk for noncompliance?
3. Who typically takes responsibility for maintaining the schedule for reviewing bylaws and other governing documents?

Legal and Compliance Issues

- The IRS needs to be informed if major governance instruments or policies change. This is easiest to do with an attachment to the IRS Form 990.
- The state needs to be informed if changes affect the articles of incorporation. Some states also require organizations registered in their state to file amended governance instruments.
- State attorneys general have the ability to file a suit if requirements outlined in governing documents are not followed.
- If the purpose of the organization has changed and it no longer follows the articles of incorporation, the articles should be amended and re-filed. The organization also needs to notify the IRS to ensure that the changes do not affect the organization's tax-exempt status.

Resources

- The Nonprofit Board's Guide to Bylaws by D. Benson Tesdahl. BoardSource, 2003 *www.boardsource.org/Bookstore.asp?category_id=0&Item=127*

RELATED PRINCIPLES

1 Laws and Regulations
19 Review of Mission and Goals

PRINCIPLE 19

REVIEW OF MISSION AND GOALS

The board should establish and review regularly the organization's mission and goals and should evaluate, no less frequently than every five years, the organization's programs, goals, and activities to be sure they advance its mission and make prudent use of its resources.

Core Concepts

- The board is the guardian of the organization's mission and should review the mission periodically.
- The board should approve the organizational strategic plan or framework and ensure that the operational plans derive from the strategic plan.
- Periodic evaluations provide critical information for the board to fulfill its oversight role and ensure resources are being used to advance the mission.

Discussion Points

1. Do we have an effective process to establish strategic goals and an operational plan that is tied to our mission?
2. The board not only has a responsibility to approve the strategic plan but to consider whether the budget provides adequate financial and human resources to accomplish its goals. Did we adequately assess this as part of the budget approval process?
3. What methods have we established to assist us in anticipating change either in the community or in our program area as it may affect our mission or programs?
4. What is our short- and long-term plan for reviewing programs, goals, and activities? Do we have a good model that shows us how similar organizations review their activities?
5. Do we receive adequate information about the effectiveness of programs and activities to make informed decisions about the organization and to fulfill our oversight role?

Legal and Compliance Issues

- IRS Form 990 requires a description of the organization's board-approved mission.
- IRS Form 990 asks which programs are new, changed, or discontinued.
- Changes in mission or purpose may affect the organization's tax-exempt status.
- Restricted endowments must be used in accordance with original donor intent.

Resources

- The Nonprofit Board's Role in Mission, Planning, and Evaluation by Kay Sprinkel Grace, Amy McClellan, and John A. Yankey. BoardSource, 2009 *www.boardsource.org/Bookstore.asp?category_id=0&Item=118*

RELATED PRINCIPLES

22 Annual Budget, Financial Performance, and Investments
24 Resource Allocation for Programs, and Administration

PRINCIPLE 20

BOARD COMPENSATION

Board members are generally expected to serve without compensation, other than reimbursement for expenses incurred to fulfill their board duties. A charitable organization that provides compensation to its board members should use appropriate comparability data to determine the amount to be paid, document the decision, and provide full disclosure to anyone, upon request, of the amount and rationale for the compensation.

Core Concepts

- Some nonprofits reimburse their board members for expenses, but it is less common to receive compensation for board service.
- When individuals are compensated for board service, the rationale and amount paid must be reasonable and should be fully documented.

Discussion Points

1. If we have chosen to compensate board members for board service, have we adequately documented the amount of compensation and reasons for doing so?
2. Compensation for board service must be reasonable and in line with what is paid by comparable organizations. What steps have we taken to meet this requirement?
3. If we decide to compensate board members, have we considered the legal implications and the potential conflicts of interest this would create?

Legal and Compliance Issues

- Compensation paid for board service must be differentiated from services done in the capacity of staff.
- Board members are not independent with respect to their own compensation and cannot qualify for the presumption of reasonableness under the IRS Intermediate Sanctions rules.
- In IRS Form 990, the organization needs to list current board members who are compensated as well as former board members who received more than $10,000 of reportable compensation.
- In IRS Form 990-PF, all compensation for board members must be reported.

Resources

- Managing Conflicts of Interest: A Primer for Nonprofit Boards by Daniel L Kurtz and Sarah E. Paul BoardSource, 2006 *www.boardsource.org/Bookstore.asp?Item=182*

RELATED PRINCIPLES

12 Board Independence
23 Loans to Directors, Officers, or Trustees
25 Travel and Other Expense Policies
26 Expense Reimbursement for Nonbusiness Companions

PROGRESS WORKSHEET

Section Two: *Effective Governance*

PRINCIPLE/ TOPIC	PRIORITY*	COMPLIANCE STATUS & ACTION STEPS	WHO IS RESPONSIBLE	TARGET COMPLETION DATE	STATUS
8 Board Responsibilities					
9 Board Meetings					
10 Board Size and Structure					
11 Board Diversity					
12 Board Independence					
13 CEO Evaluation and Compensation					
14 Separation of CEO, Board Chair, and Board Treasurer Roles					

(continued on next page)

***PRIORITY**

1. Needs immediate attention: may pose risk to the organization **2**. Needs attention but not urgent **3**. Satisfied with current status

PROGRESS WORKSHEET

Section Two: *Effective Governance* (continued from previous page)

PRINCIPLE/ TOPIC	PRIORITY*	COMPLIANCE STATUS & ACTION STEPS	WHO IS RESPONSIBLE	TARGET COMPLETION DATE	STATUS
15 Board Education and Communication					
16 Evaluation of Board Performance					
17 Board Member Term Limits					
18 Review of Governing Documents					
19 Review of Mission and Goals					
20 Board Compensation					

***PRIORITY**

1. Needs immediate attention: may pose risk to the organization **2**. Needs attention but not urgent **3**. Satisfied with current status

Strong Financial Oversight

PRINCIPLE 21

FINANCIAL RECORDS

A charitable organization must keep complete, current, and accurate financial records. Its board should receive and review timely reports of the organization's financial activities and should have a qualified, independent financial expert audit or review these statements annually in a manner appropriate to the organization's size and scale of operations.

Core Concepts

- It is important for the staff to keep complete, accurate, and current financial records and share appropriate records with the board in a timely manner.
- The board should review financial statements at least quarterly.
- Some organizations are required by law to have an audit. Almost every organization should consider the benefits of having an audit, review, or compilation by an independent CPA.
- Separating the audit committee from the finance committee provides a check and balance.
- The auditor reports to the board, not to the staff.

Discussion Points

1. The board depends on the financial statements to oversee the organization's financial resources. Are our statements generally
   - Prepared in a timely and accurate manner?
   - Understandable and easy to read?
2. Do we know whether we are required to have an independent audit? If not, have we considered the benefits of an audit versus an independent financial review?
3. How do the responsibilities of the finance and audit committees differ? What are the benefits of separating the functions of these two committees?

Legal and Compliance Issues

- IRS Form 990 inquires whether the organization's financial statements are compiled, reviewed, or audited.
- IRS Form 990 inquires whether there is a specific committee responsible for the compiling, reviewing, and auditing of the organization's financial statements and selecting the auditor.
- Organizations receiving funds from the government in excess of $500,000 must conduct independent audits.
- California was the first state to require audits for larger nonprofits (specific revenue and endowment limits) that conduct activity in California regardless of whether the organization solicits contributions from the public in that state.

21 (continued)

FINANCIAL RECORDS

Resources

- Circular A-133 *www.nacubo.org/Business_and_Policy_Areas/Accounting/News/Circular_A-133_Revised_to_Conform_with_SAS_112.html*
- Stay Exempt: Tax Basics for Exempt Organizations *www.stayexempt.org/home_virtual_ws.html*
- Nonprofit Integrity Act of 2004 *caag.state.ca.us/charities/publications/nonprofit_integrity_act_nov04.pdf*
- "The Sarbanes-Oxley Act and Implications for Nonprofit Organizations" *www.boardsource.org/dl.asp?document_id=558*
- Financial Committees by Thomas A. McLaughlin. BoardSource, 2004 *www.boardsource.org/Bookstore.asp?category_id=0&Item=149*

RELATED PRINCIPLES

11 Board Diversity
22 Annual Budget, Financial Performance, and Investments

PRINCIPLE 22

ANNUAL BUDGET, FINANCIAL PERFORMANCE, AND INVESTMENTS

The board of a charitable organization must institute policies and procedures to ensure that the organization (and, if applicable, its subsidiaries) manages and invests its funds responsibly, in accordance with all legal requirements. The full board should review and approve the organization's annual budget and should monitor actual performance against the budget.

Core Concepts

- A budget is the financial expression of an organization's yearlong plan.
- As bearers of fiduciary responsibility for the organization, the full board should approve the budget and receive regular financial statements to monitor the implementation of the budget.
- The board approves policies and reviews reports to ensure the organization is following sound financial practices.
- Whatever the level of operational reserves or an endowment, the board needs to establish policies for managing and investing these funds.

Discussion Points

1. How well do we review financial reports and monitor the organization's financial performance? Do all board members have a fundamental understanding of our financial reports?
2. Do we need to upgrade the board's financial expertise to match the complexity of the organization? If necessary, how could we accomplish this?
3. Are we making the relevant comparisons, e.g., performance against budget, previous year's financials, and appropriate ratios?
4. Do we periodically assess the likelihood of significant changes in revenue? How well could the organization manage fluctuations in income?
5. What steps have we taken to ensure that the accounting firm we have selected for our audit meets the IRS's definition of "independent"?
6. Has the organization established a reserve fund and if so, have policies been established that
   - Assess the organization's risk tolerance?
   - Oversee the management of the investments?
   - Establish minimum and maximum amounts to be kept in reserve?
   - Establish guidelines for the appropriate use of reserves?

22 (continued)

ANNUAL BUDGET, FINANCIAL PERFORMANCE, AND INVESTMENTS

Legal and Compliance Issues

- IRS Form 990 inquires whether the organization relies on an independent accountant to compile, review, or audit its financial statements. The key is an independent accountant—a person who is not providing other financial services to the organization.
- IRS Form 990 asks organizations to provide information about the value and use of endowment funds and board-designated funds that function like an endowment (also referred to as quasi-endowments).
- Private foundations may not engage in risky investments or will face excise taxes. In IRS Form 990-PF, foundations need to provide detailed information about their investment practices and results.
- Most states have laws that govern the investment, management, and expenditure of funds held by charitable organizations.

Resources

- Stay Exempt: Tax Basics for Exempt Organizations *www.stayexempt.org/home_virtual_ws.html*
- Who's Minding the Money? An Investment Guide for Nonprofit Board Members, Second Edition, by Robert P. Fry, Jr. BoardSource, 2009 *www.boardsource.org/Bookstore.asp?Item=1090*
- Understanding Nonprofit Financial Statements by Steven Berger. BoardSource, 2008 *www.boardsource.org/Bookstore.asp?category_id=0&Item=1082*
- Uniform Prudent Management of Institutional Funds Act *www.upmifa.org*

RELATED PRINCIPLES

3 Conflicts of Interest
6 Protection of Assets
11 Board Diversity
21 Financial Records
24 Resource Allocation for Programs and Administration

PRINCIPLE 23

LOANS TO DIRECTORS, OFFICERS, OR TRUSTEES

A charitable organization should not provide loans (or the equivalent, such as loan guarantees, purchasing or transferring ownership of a residence or office, or relieving a debt or lease obligation) to directors, officers, or trustees.

Core Concepts

- Providing loans to executives and board members creates real and perceived problems.
- Loans should not be made to board members under any circumstances.
- In general, loans to employees, particularly key employees, should be reviewed and understood by the board and subject to the board's approval.
- The funds of the organization should be used to advance the mission of the organization.

Discussion Points

1. Why is it considered bad practice for a charitable organization to make loans to staff or board members?
2. Do we understand what federal and state laws apply to our organization in regard to making loans?
3. Do our bylaws expressly forbid making such loans, and if not, should we consider amending them to that effect?

Legal and Compliance Issues

- Some state laws prohibit loans to board members and officers.
- IRS self-dealing rules prohibit loans by private foundations to board members or officers.
- IRS Form 990 requires disclosure of loans made to directors, officers, or key employees. Such loans, if permitted under state law, should be at market rates and approved by the board.

Resources

- IRS Publication 557 *www.irs.gov/publications/p557/index.html*
- Managing Conflicts of Interest, Second Edition by Daniel L. Kurtz and Sarah E. Paul. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?Item=182*

RELATED PRINCIPLES

1 Laws and Regulations
20 Board Compensation

PRINCIPLE 24

RESOURCE ALLOCATION FOR PROGRAMS AND ADMINISTRATION

A charitable organization should spend a significant percentage of its annual budget on programs that pursue its mission. The budget should also provide sufficient resources for effective administration of the organization, and, if it solicits contributions, for appropriate fundraising activities.

Core Concepts

- A major part of the budget should be allocated to programs. (Some "watchdog" organizations recommend that public charities spend at least 65 percent of their total expenses on program activities. However, this may not be applicable to all charities.)
- Adequate resources should also be allocated to fundraising and administration.
- Programmatic, fundraising, and administrative expenses should be accurately tracked and recorded.
- All costs, including staff time and overhead, should be included when assessing the cost of programs and services.

Discussion Points

1. A sound budget balances revenue and expenditures; "balancing" also includes allocating the appropriate ratio of program, administration, and fundraising expenses against revenue. Have we discussed and established guidelines for this type of balanced budget?
2. It is the board's responsibility to ensure sufficient infrastructure to fulfill organizational mission. What methods have we implemented to periodically assess how well we are meeting this responsibility?
3. IRS Form 990 dissects fundraising expenses and revenue in detail. Do we have adequate information and accurate records to complete our Form 990?

Legal and Compliance Issues

- IRS Form 990 examines fundraising expenses and revenue in detail.

Resources

- Nonprofit Overhead Cost Study *nccsdataweb.urban.org/FAQ/index.php?category=40*

RELATED PRINCIPLES

19 Review of Mission and Goals
22 Annual Budget, Financial Performance, and Investments
32 Fundraiser Compensation

PRINCIPLE 25

TRAVEL AND OTHER EXPENSE POLICIES

A charitable organization should establish clear, written policies for paying or reimbursing expenses incurred by anyone conducting business or traveling on behalf of the organization, including types of expenses that can be paid for or reimbursed and the documentation required. Such policies should require that travel on behalf of the organization is to be undertaken in a cost-effective manner.

Core Concepts

- The organization should have a policy that establishes guidelines for expense reimbursement.
- Keeping accurate records of expenses is essential.
- Receipts should be required for expense reimbursement.
- A reimbursement policy should define what expenses are appropriate and what expenses are considered excessive and not appropriate.

Discussion Points

1. Reimbursement for travel expenses can be a slippery slope. Clear, easy-to-follow guidelines protect our organization from abuse, bad publicity, or inconsistent interpretation. Have we reviewed our travel policies and compared ours to those of other organizations?
2. Exceptions to our policies, such as first-class travel, should be consistently applied and transparent to all board members. Do our policies for travel promote the organization's best interest in the most cost-effective way? Are exceptions consistent and transparent?

Legal and Compliance Issues

- Reimbursement for unsubstantiated or excessive travel expenses is considered compensation and should be reported as such on the recipient's W-2 and in IRS Form 990.
- IRS Form 990 asks whether organizations pay or reimburse first-class or charter travel expenses for board members, officers, or key employees.

Resources

- Independent Sector Travel Policy *www.independentsector.org/about/ISTravelPolicy.pdf*
- Independent Sector Gifts and Entertainment Policy *www.independentsector.org/about/ISEntertainmentPolicy.pdf*
- The Nonprofit Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?category_id=0&Item=45*
- "Five SOX-Related Issues You Need to Analyze," Nonprofit Times *www.nptimes.com/howtos/boards.html*

RELATED PRINCIPLES

20 Board Compensation
26 Expense Reimbursement for Nonbusiness Travel Companions

PRINCIPLE 26

EXPENSE REIMBURSEMENT FOR NONBUSINESS TRAVEL COMPANIONS

A charitable organization should neither pay for nor reimburse travel expenditures for spouses, dependents or others who are accompanying someone conducting business for the organization unless they, too, are conducting such business.

Core Concepts

- Reimbursement of expenses for spouses is appropriate only when they have a role in conducting business for the organization.
- In other situations, paid expenses for the spouse are considered compensation for the person conducting business for the organization.

Discussion Points

1. Do we have a policy that addresses reimbursement of expenses for spouses or dependents of board members?
2. Why is it important for our organization to have a clear position on reimbursing expenses for travel companions?
3. When it is deemed appropriate to reimburse expenses for travel companions, are we clear when this is to be reported as income?

Legal and Compliance Issues

- Excessive reimbursement can be considered a deliberate personal benefit and is not appropriate for a tax-exempt organization.
- Spousal reimbursement is generally considered compensation and should be reported as such.
- IRS Form 990 asks whether organizations pay or reimburse spousal or companion travel expenses for board members, officers, and key employees.

Resources

- Independent Sector Travel Policy *www.independentsector.org/about/ ISTravelPolicy.pdf*
- "Board & Spousal Expense Reimbursement," Notre Dame University *www.controller.nd.edu/policies-and-procedures/board-and-spousal.shtml*

RELATED PRINCIPLES

20 Board Compensation

PROGRESS WORKSHEET

Section Three: *Financial Oversight*

PRINCIPLE/ TOPIC	PRIORITY*	COMPLIANCE STATUS & ACTION STEPS	WHO IS RESPONSIBLE	TARGET COMPLETION DATE	STATUS
21 Financial Records					
22 Annual Budget, Financial Performance, and Investments					
23 Loans to Directors, Officers, or Trustees					
24 Resource Allocation for Programs and Administration					
25 Travel and Other Expense Policies					
26 Expense Reimbursement for non-business travel companions					

***PRIORITY**

1. Needs immediate attention: may pose risk to the organization **2**. Needs attention but not urgent **3**. Satisfied with current status

Responsible Fundraising

PRINCIPLE 27

ACCURACY AND TRUTHFULNESS OF FUNDRAISING MATERIALS

Solicitation materials and other communications addressed to donors and the public must clearly identify the organization and be accurate and truthful.

Core Concepts

- Guidelines should be established for all fundraising materials and communication with donors.
- All fundraising materials should be subject to a review process.
- Solicitation materials must reflect and represent the organization truthfully.

Discussion Points

1. Have we established a process that is practical and adequate for reviewing fundraising materials and communications with donors? Who should be involved in the review process?
2. Some organizations have endorsed "A Donor Bill of Rights." Have we considered doing this?
3. Have we complied with state laws regarding the solicitation of contributions?
4. Do we address the needs of our donors by including clear, accurate information in our solicitation materials about the following?
   - Who is soliciting the contribution
   - What types of contributions the organization will accept
   - How contributions will be used
   - Whom to contact for additional information

Legal and Compliance Issues

- Most states have laws regulating the solicitation of funds within the state for charitable purposes, regardless of where the charity is incorporated.

Resources

- Donor Bill of Rights *www.afpnet.org/ka/ka-3.cfm?content_item_id=9988*
- Fearless Fundraising for Nonprofit Boards, by Dave Sternberg. BoardSource, 2008 *www.boardsource.org/Bookstore.asp?Item=1085*
- The Multi-State Filer Project *www.multistatefiling.org/index.html*

RELATED PRINCIPLES

2 Code of Ethics
7 Availability of Information to the Public
29 Acknowledgment of Tax-deductible Contributions

PRINCIPLE 28

COMPLIANCE WITH DONOR'S INTENT

Contributions must be used for the purposes consistent with the donor's intent, whether as described in the relevant solicitation materials or as specifically directed by the donor.

Core Concepts

- Donor intent defines the present and future use of contributed funds. Organizations must respect the rights and intent of the donor.
- The charitable organization needs to agree with the conditions before accepting a donation. If the organization does not agree with the conditions, it should reject the donation.
- Donor intent should be clearly documented.

Discussion Points

1. What types of problems could arise when a donor makes a contribution and specifies how the money can be used? How can these problems best be avoided?
2. If we can't utilize the funds in a manner consistent with the donor's intent, do we have clear procedures governing when and how we return the money or try to negotiate new terms?
3. Do we have a gift acceptance policy to help guide our actions?

Legal and Compliance Issues

- A written agreement with the donor is a legally binding document.
- Many states have specific laws governing the use of donor-restricted endowment funds.

Resources

- Donor Bill of Rights *www.case.org/Content/AboutCASE/Display.cfm?CONTENTITEMID=2569*
- Barnes Foundation controversy *topics.nytimes.com/top/reference/timestopics/organizations/b/barnes_foundation/index.html*
- The Uniform Prudent Management of Institutional Funds Act *www.upmifa.org*

RELATED PRINCIPLES

2 Code of Ethics
30 Gift Acceptance Policies

PRINCIPLE 29

ACKNOWLEDGMENT OF TAX-DEDUCTIBLE CONTRIBUTIONS

A charitable organization must provide donors with specific acknowledgments of charitable contributions, in accordance with IRS requirements, as well as information to facilitate the donors' compliance with tax law requirements.

Core Concepts

- Contributions to charitable organizations may be tax deductible. The IRS has established requirements that must be met by both the organization and the donor.
- The charitable organization does not assess the value of a gift; that is the responsibility of the donor in his or her personal tax filing.
- The charity must provide a fair market value for anything it gives in return for a gift.

Discussion Points

1. The value of acknowledging contributions goes beyond assisting donors with taking applicable tax deductions and includes building goodwill for the organization. What steps are we taking and what others could we take to maximize goodwill?
2. What information should be used to estimate the fair market value for products and services that are received in exchange for a donation?

Legal and Compliance Issues

- Gifts given to nonprofit organizations exempt from taxation under 501(c)(3) status are tax deductible.
- Charities are required to provide a written acknowledgment of gifts of $250 or more, and donors cannot claim a deduction without such an acknowledgment. In addition, donors cannot claim a deduction for any cash contribution, regardless of amount, without written evidence of the contribution such as a cancelled check, acknowledgment letter, or other receipt.
- If the donor receives something in return for the donation, the difference between the amount of the donation and the value of the item received is deductible.
- In quid-pro-quo contributions of $75 or more, where the donor receives something of more than token value in return, the organization must provide a written statement indicating that the deductibility is limited to the excess amount paid. The statement must include a good-faith estimate of the value of the goods or services.

Resources

- IRS rules on charitable contributions *www.irs.gov/pub/irs-pdf/p1771.pdf*

RELATED PRINCIPLES

27 Accuracy and Truthfulness of Fundraising Materials

PRINCIPLE 30

GIFT ACCEPTANCE POLICIES

A charitable organization should adopt clear policies, based on its specific exempt purpose, to determine whether accepting a gift would compromise its ethics, financial circumstances, program focus, or other interests.

Core Concepts

- A gift acceptance policy serves as a guide to accept or refuse charitable contributions.
- When accepting gifts, the organization should keep in mind the mission, restrictions, and conditions of the gift; liabilities that may come with the gift; and how the gift or the donor may affect the reputation of the organization.
- The organization should pay special attention to noncash gifts, such as real estate, motor vehicles, art, and appreciated stock.

Discussion Points

1. How can gift acceptance policies help an organization make the right decision at the right time? Have we adopted comprehensive gift acceptance policies?
2. What examples are we aware of where organizations have encountered problems by accepting gifts?
3. What procedures would we follow if we unexpectedly received a gift that exceeded all expectations and went well beyond the typical gift?

Legal and Compliance Issues

- If the donor imposes too many restrictions on the use of the gift, the gift may lose its tax deductibility.
- The IRS Form 990 asks whether organizations have a gift acceptance policy requiring the review of nonstandard gifts, such as property that is not readily marketable.

Resources

- IRS rules on charitable contributions *www.irs.gov/pub/irs-pdf/p1771.pdf*
- The Nonprofit Policy Sampler by Barbara Lawrence and Outi Flynn. BoardSource, 2006 *www.boardsource.org/Bookstore.asp?category_id=0&Item=45*
- A Donor's Guide to Vehicle Donations *www.irs.gov/pub/irs-pdf/p4303.pdf*

RELATED PRINCIPLES

2 Code of Ethics
28 Compliance with Donor's Intent

PRINCIPLE 31

OVERSIGHT OF FUNDRAISERS

A charitable organization should provide appropriate training and supervision of the people soliciting funds on its behalf to ensure that they understand their responsibilities and applicable federal, state and local laws, and do not employ techniques that are coercive, intimidating, or intended to harass potential donors.

Core Concepts

- Fundraisers and telemarketers, whether on-staff or hired from the outside, represent the organization. Their training should include strict guidelines for appropriate behavior.
- When an outside firm or consultant is used to solicit contributions, a contract should define the responsibilities of both parties.

Discussion Points

1. What types of training do similar organizations provide to those who solicit funds on behalf of the organization?
2. What are the risks, both legally and to the reputation of our organization, when fundraisers are not well trained?
3. What issues should be covered in a contract when an outside firm is used to raise funds?

Legal and Compliance Issues

- FCC laws cover telemarketer activities. Rules cover when calls can be made, transparency about the purpose of the call, and accuracy of information.
- State charitable solicitation laws also provide rules affecting the use of telemarketers and other paid charitable solicitors.
- Some states require that a contract between an organization and an outside fundraising firm must be in writing.

Resources

- FCC Telemarketing Policy *www.fcc.gov/cgb/policy/telemarketing.html*
- FCC rules explained *www.ehow.com/how_2036902_understand-federal-telemarketing.html*
- Tips for Charities Raising Funds in New York State: Questions to Ask Before and After Signing a Contract with a Fund Raising Professional, New York State Attorney General's Charities Bureau *www.oag.state.ny.us/bureaus/charities/pdfs/charities_raising_funds.pdf*

RELATED PRINCIPLES

27 Accuracy and Truthfulness of Fundraising Materials
28 Compliance with Donor's Intent
30 Gift Acceptance Policies

PRINCIPLE 32

FUNDRAISER COMPENSATION

A charitable organization should not compensate internal or external fundraisers based on a commission or a percentage of the amount raised.

Core Concepts

- Compensation for fundraising activities should be based on general performance and commensurate with time and effort expended.
- Those raising funds on behalf of the organization need to uphold the organization's values and reputation and the donor's trust in the organization.
- Policies for raising funds need to cover both internal and external fundraisers.

Discussion Points

1. Why is it important for our organization to establish a policy regarding compensation of internal and external fundraisers? What resources have we used or should we be using to ensure our guidelines are appropriate?
2. What is the potential harm of compensating fundraisers based on commission?
3. Do we have an adequate orientation process for our fundraising staff? Does this process ensure that employees are informed and educated about the following?
   - Information related to our fundraising policies
   - How their work will be evaluated
   - How their compensation is determined
4. Have we compared our fundraising policies and compensation practices to organizations similar to ours? Has this been documented?

Legal and Compliance Issue

- Intermediate Sanctions define penalties for excessive compensation, which can apply to fundraisers in certain cases.

Resources

- Donor Bill of Rights *www.afpnet.org/ka/ka-3.cfm?content_item_id=9988*
- Ethical Principles for Fundraisers *www.afpnet.org/ka/ka-3.cfm?folder_id=897&content_item_id=1068*

RELATED PRINCIPLES

13 CEO Evaluation and Compensation

PRINCIPLE 33

DONOR PRIVACY

A charitable organization should respect the privacy of individual donors and, except where disclosure is required by law, should not sell or otherwise make available the names and contact information of its donors without providing them an opportunity at least once a year to opt out of the use of their names.

Core Concepts

- Charities should respect donor privacy.
- Nonprofits should always provide an option to members, customers, and donors to opt out of the inclusion of their names in lists to be sold, rented, or otherwise shared.

Discussion Points

1. What steps are considered good practice for maintaining donor lists? Have we developed the appropriate steps to ensure we are maintaining and accurately updating our donor lists?
2. How easily can donors "opt-out" when they are not interested in receiving additional information or want to be removed from lists shared with the public?
3. Do we have an adequate privacy policy that can be easily found and informs interested parties about the use of their personal information?
4. How does transparency about the use of donor information preserve the trust and support of donors?

Legal and Compliance Issues

- Public charities and private foundations must file donor information with their IRS Form 990, 990-EZ, or 990-PF. However, the names and addresses of donors to public charities are treated as confidential by the IRS. Donor information for private foundations is open for public inspection.
- Healthcare organizations need to determine whether Health Insurance Portability and Accountability Act (HIPAA) regulations apply to their fundraising procedures.

Resources

- HIPAA regulations *www.hhs.gov/ocr/privacy/index.html*
- Donor Bill of Rights *www.afpnet.org/ka/ka-3.cfm?content_item_id=9988*
- Ethical Fundraising by Janice Gow Pettey. Wiley & Sons, 2008 *www.wiley.com/WileyCDA/WileyTitle/productCd-0470225211.html*
- Schedule B (Form 990, 990-EZ, or 990-PF) General Instructions *www.irs.gov/pub/irs-pdf/f990ezb.pdf*
- E-Philanthropy Code of Ethics *www.fundraising123.org/article/ephilanthropy-code-ethics*
- Federal Trade Commission, "Facts for Consumers — Charitable Donations: Give or Take?" *www.ftc.gov/bcp/edu/pubs/consumer/telemarketing/tel01.shtm*
- Q&A: The National Do Not Call Registry *www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt107.shtm*
- Federal Communications Commission, "Fax Advertising: What You Need to Know" *www.fcc.gov/cgb/consumerfacts/unwantedfaxes.html*

RELATED PRINCIPLES

28 Compliance with Donor's Intent
30 Gift Acceptance Policies

PROGRESS WORKSHEET

Section Four: *Responsible Fundraising*

PRINCIPLE/ TOPIC	PRIORITY*	COMPLIANCE STATUS & ACTION STEPS	WHO IS RESPONSIBLE	TARGET COMPLETION DATE	STATUS
27 Accuracy and Truthfulness of Fundraising Materials					
28 Compliance with Donor's Intent					
29 Acknowledgement of Tax Deductible Contributions					
30 Gift Acceptance Policies					
31 Oversight of Fundraisers					
32 Fundraiser Compensation					
32 Donor Privacy					

***PRIORITY**

1. Needs immediate attention: may pose risk to the organization **2**. Needs attention but not urgent **3**. Satisfied with current status

REFERENCE GRID

The following pages are intended to provide a quick reference to the 33 principles. Please refer to *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations,* as well as the contents of this workbook, for a more detailed explanation of what should be considered when examining each principle. The Reference Grid will assist you in determining how the principles relate to each other and where they overlap, which principles are addressed in the Form 990, which principles include or recommend policies, and which principles are required for legal compliance.

Legal Compliance and Public Disclosure

PRINCIPLE	TOPIC	RELATED PRINCIPLES	FORM 990 AND 990-PF	POLICY RECOMMENDED	MUST COMPLY
1	Laws and Regulations	6 Protection of Assets 15 Board Education and Communication 22 Annual Budget, Financial Performance, and Investments			X
2	Code of Ethics	15 Board Education and Communication 30 Gift Acceptance Policies		Code of Ethics	
3	Conflicts of Interest	6 Protection of Assets 12 Board Independence	Part VI, Line 12 and Line 19	Conflict-of-Interest Policy	
4	"Whistleblower" Policy	6 Protection of Assets	Part VI, Line 13	Whistleblower Policy	
5	Document Retention and Destruction	6 Protection of Assets 18 Review of Governing Documents	Part VI, Line 14 and Schedule E	Document Retention and Destruction Policy	
6	Protection of Assets	ALL	Part VI, Line 16 990-PF: Part V, VII-A	Human Resource Policies	
7	Availability of Information to the Public	1 Laws and Regulations 3 Conflicts of Interest 19 Review of Mission and Goals 27 Accuracy and Truthfulness of Fundraising Materials 33 Donor Privacy	Part VI, Section C, Line 18, 19, 20 and Part VI, Line 10		

REFERENCE GRID

Effective Governance					
PRINCIPLE	**TOPIC**	**RELATED PRINCIPLES**	**FORM 990 AND 990-PF**	**POLICY RECOMMENDED**	**MUST COMPLY**
8	Board Responsibilities	ALL			X
9	Board Meetings	18 Review of Governing Documents	Part VI, Line 8		
10	Board Size and Structure	12 Board Independence	Part I, Line 3 and Part VI, Line 1a	Board Meeting AttendancePolicy	
11	Board Diversity	10 Board Size and Structure 12 Board Independence 21 Financial Records 22 Annual Budget, Financial Performance, and Investments	Schedule E	Whistleblower Policy	
12	Board Independence	3 Conflicts of interest 10 Board Size and Structure 20 Board Compensation	Part I, Line 4 and VI, Line 1b 990-PF: Part XV	Document Retention and Destruction Policy	
13	CEO Evaluation and Compensation	12 Board Independence 14 Separation of CEO, Board Chair, and Board Treasurer Roles	Part VI, Line 15, Part VII 990-PF: VIII	Executive Compensation Policy	
14	Separation of CEO, Board Chair, and Board Treasurer Roles	1 Laws and Regulations 3 Conflicts of Interest 12 Board Independence	Part 1, Line 4 and Part VI, Line 1b, 2, 3	Executive Compensation Policy	

REFERENCE GRID

Effective Governance *(continued)*					
PRINCIPLE	**TOPIC**	**RELATED PRINCIPLES**	**FORM 990 AND 990-PF**	**POLICY RECOMMENDED**	**MUST COMPLY**
15	Board Education and Communication	6 Protection of Assets 18 Review of Governing Documents 19 Review Mission and Goals 21 Financial Records 22 Annual Budget, Financial Performance, and Investments			
16	Evaluation of Board Performance	8 Board Responsibilities 15 Board Education and Communication 17 Board Member Term Limits			
17	Board Member Term Limits	10 Board Size and Structure 11 Board Diversity 16 Evaluation of Board Performance		Term Limits Policy; Consecutive Terms Policy	
18	Review of Governing Documents	1 Laws and Regulations 19 Review of Mission and Goals	Part III		
19	Review of Mission and Goals	22 Annual Budget, Financial Performance, and Investments 24 Resource Allocation for Programs and Administration	Part 1, Line 1 and Part3, Line 1 990-PF: XVI-B		
20	Board Compensation	12 Board Independence 23 Loans to Directors, Officers, or Trustees 25 Travel and Other Expense Policies 26 Expense Reimbursement for Nonbusiness Travel Companions	Part VI, Line 15 and Schedule J 990-PF: VIII	Board Compensation Policy	

REFERENCE GRID

Financial Oversight					
PRINCIPLE	**TOPIC**	**RELATED PRINCIPLES**	**FORM 990 AND 990-PF**	**POLICY RECOMMENDED**	**MUST COMPLY**
21	Financial Records	11 Board Diversity 22 Annual Budget, Financial Performance, and Investments	Part XI, Line 1 990-PF: Section J, detailed recording of finances throughout the Form		X
22	Annual Budget, Financial Performance, and Investments	3 Conflicts of Interest 6 Protection of Assets 11 Board Diversity 21 Financial Records 24 Resource Allocation for Programs and Administration	Part 4, Line 10 and Schedule D 990-PF: Part I, IV, VI, X	Investment Policy; Use of Reserves Policy	X
23	Loans to Directors, Officers, or Trustees	1 Laws and Regulations 20 Board Compensation	Part IV, Line 26 and Schedule L 990-PF: Part VII-B	Loan Policy	
24	Resource Allocation for Programs and Administration	19 Review of mission and goals 22 Annual Budget, Financial Performance, and Investments 32 Fundraiser Compensation	Part 1, Part III 990-PF: Part XI, XII		
25	Travel and Other Expense Policies	20 Board Compensation 26 Expense Reimbursement for Nonbusiness travel Companions	Schedule J	Payment or Reimbursement of Expenses Policy; Travel Policy	
26	Expense Reimbursement for Nonbusiness Travel Companions	20 Board Compensation	Schedule J	Payment or Reimbursement of Expenses Policy; Travel Policy	

REFERENCE GRID

Responsible Fundraising					
PRINCIPLE	**TOPIC**	**RELATED PRINCIPLES**	**FORM 990 AND 990-PF**	**POLICY RECOMMENDED**	**MUST COMPLY**
27	Accuracy and Truthfulness of Fundraising Materials	2 Code of Ethics 7 Availability of Information to the Public 29 Acknowledgment of Tax-deductible Contributions			X
28	Compliance with Donor's Intent	2 Code of Ethics 30 Gift Acceptance Policies	Schedule D	Investment Policy; Use of Reserves Policy	X
29	Acknowledgment of Tax-deductible Contributions	27 Accuracy and Truthfulness of Fundraising Materials	Part V, Line 6, 7	Loan Policy	X
30	Gift Acceptance Policies	2 Code of ethics 28 Compliance with Donor's Intent	Schedule M, Line 31	Gift Acceptance Policy	
31	Oversight of Fundraisers	27 Accuracy and Truthfulness of Fundraising Materials 28 Compliance with Donor's Intent 30 Gift Acceptance Policies			
32	Fundraiser Compensation	13 CEO Evaluation and Compensation	Part 1, Line 16a, Part VII, Section B		
33	Donor Privacy	28 Compliance with Donor's Intent 30 Gift Acceptance Policies	Part VIII	Donor Privacy Policy	

ABOUT INDEPENDENT SECTOR

Independent Sector is a nonprofit, nonpartisan coalition of hundreds of charities, foundations, and corporate philanthropy programs, collectively representing tens of thousands of charitable groups in every state across the nation. As the preeminent leadership organization where nonprofits and philanthropies from diverse fields of interest and endeavor come together, we play a critical role in the sector's ability and capacity to share knowledge, create innovative approaches and strategies, and collaborate to better serve the needs of individuals and communities.

Our mission is to advance the common good by leading, strengthening, and mobilizing the nonprofit and philanthropic community. Our overarching goals are to

- Work with members to communicate to key policy makers, the media, and the society at large the value of the nonprofit community's contributions, particularly on the critical role its organizations play on issues facing communities throughout the country and the world
- Encourage diverse organizations to come together and develop joint strategies around shared interests and a shared vision of a just and inclusive democracy of active citizens and vibrant institutions.
- Strengthen relationships between the charitable community and key federal officials to educate about public policies that build the ability of charitable organizations to serve communities more effectively.
- Inform and mobilize the nonprofit community to take effective action on legislative and regulatory developments that affect the ability of nonprofits and foundations to fulfill their missions.
- Address trends affecting the work of the nonprofit community with a view to helping manage challenges and capturing opportunities to strengthen our impact.
- Encourage a commitment by the nonprofit community to practices that demonstrate effectiveness and meaningful impact, support transparency, and reflect the highest possible standards of ethical conduct.

ABOUT BOARDSOURCE

BoardSource is dedicated to advancing the public good by building exceptional nonprofit boards and inspiring board service. BoardSource strives to support and promote excellence in board service, is the premier source of cutting-edge thinking and resources related to nonprofit boards, and engages and develops the next generation of board leaders.

BoardSource provides

- Knowledge and resources for nonprofit leaders through workshops, training, assessment tools, an extensive website, and a membership program.
- Governance consultants who work directly with nonprofit leaders to design specialized solutions to meet an organization's needs.
- The world's largest, most comprehensive selection of material on nonprofit governance, including publications and CDs.
- An annual conference that convenes approximately 900 governance experts, board members, chief executives, and senior staff from around the world to discuss the newest thinking and practices in nonprofit governance.

BoardSource, a 501(c)(3) organization, served more than 600,000 nonprofit leaders in 2008.

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