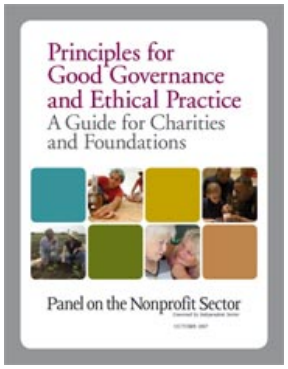
Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

Principles for Good Governance and Ethical Practice:
A Guide for Charities and Foundations

EXECUTIVE SUMMARY



Preserving the soundness and integrity of the nonprofit community must strike a careful balance between prudent legal mandates to ensure that organizations do not abuse the privilege of their exempt status, and well-informed self-governance and mutual awareness among nonprofit organizations. The Panel on the Nonprofit Sector has been committed to formulating effective, broadly applicable methods of self-regulation since its inception in 2004. This work has proceeded from a belief—among lawmakers and their staffs no less than among charitable organizations—that the best bulwark against misconduct will always be a well-informed vigilance by members of the nonprofit community themselves, including a set principles they could adopt, promote sector-wide, and improve over time. Widespread use of such principles would enable organizations to improve their operations by learning from each other.

Nonprofit organizations have long embraced the need for standards of ethical practice that preserve and strengthen the public's confidence. Many such systems in fact already exist, though none have applied to the entire range of American charitable organizations. The pages that follow therefore set forth a comprehensive set of principles to inform the field. In developing these principles, the Panel called together 34 leaders from charities, foundations, academia, and oversight agencies; commissioned two studies of self-regulation regimes already in use; and conducted a detailed review of principles and standards drawn from more than 50 such systems, including selections from both the nonprofit and for-profit sectors. Guidance and encouragement from two rounds of public comment further strengthened the Panel's final set of principles.

With this document, the Panel sets forth principles of sound practice that should be considered by every charitable organization as a guide for strengthening its effectiveness and accountability. The 33 principles are organized under four main categories:

1. Legal Compliance and Public Disclosure,
2. Effective Governance,
3. Strong Financial Oversight, and
4. Responsible Fundraising.

The Panel strongly recommends that an organization's board conduct a thorough discussion of the complete set of principles, and determine how the organization should apply each to its operations. It is possible that after this review, a board may conclude certain principles do not apply to its organization. Developing a transparent process for communicating how the organization has addressed the principles, including the reasons that any of the principles are not relevant, is likely to foster a greater appreciation of the diverse nature of the sector and deeper respect for the board's good stewardship.

Legal Compliance and Public Disclosure

1. 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.

2. 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.

3. 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.

4. 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 confidentially of, individuals who make good-faith reports.

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

6. 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.

7. 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.

Effective Governance

8. 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.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

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

19. 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.

20. 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.

Strong Financial Oversight

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

Responsible Fundraising

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

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

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

30. 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.

31. 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.

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

33. 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.