



Must Have Policies (and Real Life Stories When You Don't)



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CURRENT REGULATORY CLIMATE



A word cloud of regulatory and oversight terms. The most prominent words are 'Watchdog', 'Oversight', 'Pension', 'Media', 'Treasury', 'Oxley', 'Integrity', 'Protection', 'Scrutiny', 'Governance', and 'Act IRS'. Other visible words include 'Finance', 'Grassley', 'Sarbanes', 'Reform', and 'Senate'.

Cautionary Tales

- United Way
- The Nature Conservancy
- American University
- American Red Cross
- Smithsonian Institute
- Getty Museum



Common Themes

- Ineffective Board oversight of executive management and operations
- Boards did not receive sufficient information – did not question reports
- Policies, procedures and strategies driven by executives rather than Board



Common Themes

- Inappropriate handling of conflicts and insider transactions
- No culture of transparency and accountability
- Sense of entitlement at the top



Lessons

- Far easier to make corrections before faced with scrutiny
- Certain hot button issues including
 - Executive compensation and perks
 - Transactions with insiders and conflicts
 - Transparency
- ***Nonprofit Board has ultimate oversight responsibility***



How do Boards Provide Oversight?

- Attending meetings
- Approving an annual budget
- Reviewing audited financial statements and 990s
- Delegating power to committees and receiving regular reports of committee work

How do Boards Provide Oversight?

- Evaluating board, board committees and chief executive performance
- ***Implementing policies and procedures and ensuring they are followed***

Governance & Management Policies

- No policies are required
- Form 990 requests information regarding
 - Executive Compensation Policies
 - Conflicts of Interest
 - Investment Policy
 - Fundraising Policy
 - Document Retention and Destruction
 - Ethics and Whistleblower Policy



Key Policies Nonprofits Should Consider

- Conflict of Interest
- Signature Authority
- Gift Acceptance
- Confidentiality
- Whistleblower
- Document Retention



Conflicts of Interest Policy

Form 990 asks whether:

- The Charity has a written conflict of interest policy.
- Whether the Charity consistently monitors and enforces the policy.
- How many transactions the Charity reviewed under the policy during the year.
- Form 990, Part VI, Line 12 a-c.



Conflicts of Interest Policy

- Conflict of Interest Policy should be adopted and enforced
- Some states mandate conflict of interest policies for certain organizations
- Should cover not only directors, officers, and trustees, but also key employees and others with substantial influence



Conflicts of Interest Policy

Policy should require:

- Disclosure of possible conflicts
- Independent directors review and approve transactions
- Analysis of alternatives
- Appropriate documentation of actions



Moral - You must be
INDEPENDENT!!



Signature Authority Policy

- Limits authority to commit funds and approve contracts
- Requires progressive approvals based on size of the transaction or length of the commitment



Signature Authority Policy

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	President	One Director	Board Resolution
Budgeted financial commitments of \$10,000 or less	Required - May do so alone	Not required	Not required
Budgeted financial commitments greater than \$10,000 and less than \$25,000	Required	Required	Not Required
Unbudgeted financial commitments and budgeted financial commitments of \$25,000 or more	Required	Required	Required



Confidentiality Policy





Confidentiality Policy

- Fiduciary duties include a “Duty of Loyalty”
- Duty of Loyalty includes a Duty of Confidentiality
- Can reinforce understanding of this duty and ability to deal with issues by having Directors and Officers sign a Confidentiality Policy



Confidentiality Policy

Confidentiality Policy should address:

- Confidential financial and human resources information
- Donor information including information related to anonymous donors
- Reports and data obtained as a director or officer

○ ○ ○ | Moral – What happens in the board room STAYS in the board room



○ ○ ○ | Gift Acceptance Policy

- Form 990 asks whether the organization has a Gift Acceptance Policy.
- Increasingly, charities are approached by donors with complex non-cash gifts including closely held business interests, real property, insurance and annuity contracts, art and collectables.



Gift Acceptance Policy

Gift Acceptance Policy should provide procedures for evaluating complex gifts and mitigating risks such as:

- Excessive carrying costs
- Environmental claims
- Gifts that will cost more to liquidate than they are worth
- Tax shelters and other gifts with excessive legal risk



Moral – Something isn't always worth more than nothing!





Compensation Policy

Form 990 asks about organizations' Compensation Policy in two places:

- Process - Form 990, Part VI, Section B, Line 15
- Information – Form 990, Part VII and Schedule J



Compensation Policy

A well drafted Compensation Policy ensures organizations:

- Ensures appropriate compensation compared to similarly-situated organizations
- Ensures executives are rewarded commensurate with organization performance
- Protects against intermediate sanctions



Compensation Policy

Major Components of Compensation

- Base salary
- Incentives (short and long-term)
- Benefits (health, retirement, etc.)
- Executive benefits and perquisites
- Employment contracts and severance policies

Component	Target Market (Percentile)	Organization Pays for:
Base Salaries	60 th	Extraordinary Leadership
Incentive Compensation	60 th to 70 th (Based on Performance)	Achievement of Foundation's Annual Objectives
Benefits, Perquisites	60 th	Executive Health and Welfare
Retirement	60 th to 70 th	Executive Retention



Fundraising Policy

- A charity should use paid fundraisers that are registered with the states where they are soliciting.
- Performance of professional fundraisers should be continuously monitored.
- Charities must comply with the registration requirements in each state where the charity solicits funds.



Avoiding Criminal Liability

Two recommended policies are designed to avoid criminal liability under Sarbanes Oxley for:

- Document destruction
- Whistleblower retaliation



Document Destruction and Retention Policy

Sarbanes Oxley made it a criminal offense for “any organization” to:

- Knowingly alter, destroy, mutilate, conceal, cover up or falsify any record, document or tangible object
- With intent to impede, obstruct or influence
- The investigation or administration of any matter within jurisdiction of any US agency or bankruptcy case



Document Retention and Destruction Policy

- Penalty: Fines and up to 20 years in prison
- Action: Halt any destruction, even if being performed on set schedule, when become aware of I.R.S. or State investigation of issues
- Form 990: Asks whether the organization has a written document destruction and retention policy (Part III, Line 5)



Whistleblower Policy

Part VI, Line 13 of Form 990 asks:

- Whether the organization became aware during the year of a material diversion of its assets; and
- Whether the organization has a written whistleblower policy



Whistleblower Policy

Retaliation against whistleblowers

- It is a criminal offense to retaliate against anyone who provides truthful information relating to commission or possible commission of federal offense
- Penalty can include fine and/or imprisonment up to 10 years
- Boards should adopt a Whistleblower Policy that provides a place to report illegal conduct, anonymity for whistleblower, and procedures for handling complaints



Investment Policy

- Part VII, lines 11 and 12 of Form 990 asks whether the organization has a written policy to review investments
- An Investment Policy should clearly define the organization's financial objectives and require a review process
- Investment Policy should ensure diversification, avoidance or reduce of unrelated business income, and avoidance of excessive risk



Investment Policy

- State laws based on UMIFA or UPMIFA will add requirements that should be incorporated
- Private Foundations have additional considerations to avoid jeopardizing investments and excess business holdings



Moral – You can delegate management but you cannot delegate oversight





Other Policies to Consider

- Chapter Policy
- Foreign Aid Policy
- Windfall Policy
- Joint Venture Policy
- Travel and Expense Policy
- Scholarship Guidelines
- Grant Guidelines
- Third-party Fundraiser Guidelines
- Email Voting Policy



QUESTIONS?

