

Certificate of Nonprofit Board Education

# Fiduciary Oversight

*February 22, 2017*



© 2016 BoardSource.  
Not to be distributed or reproduced without  
the express permission of BoardSource.

# Contact Us

- Technical assistance: 1-877-892-6273
- Content-related questions:  
[webinarquestions@boardsource.org](mailto:webinarquestions@boardsource.org)



# BoardSource: The Leader for Nonprofit Governance

- **Over 27 years** of experience
- **Mission-driven** governance focused organization
- **Premier resources** worldwide
- Serving community of over **100,000 nonprofit leaders**



# Welcome

## Dr. Robin H. Stacia



*BOARDSOURCE*  
*Senior Governance Consultant*

*PRINCIPAL*  
*Sage Consulting Network, Inc.*

*STANDARDS FOR EXCELLENCE*  
*An Ethics And Accountability Code For Nonprofit*  
*Organizations*

*LEAN SIX SIGMA PROCESS*  
*IMPROVEMENT Green Belt*

# The Who, What, and How of Board Performance



## PEOPLE (WHO) Board Composition & Structure

### Composition

- Size & Terms
- Composition/Diversity & Inclusion
- Recruitment & Elections

### Structures

- Committees
- Meetings



## WORK (WHAT) Board Responsibility

### Strategy & Programs

- Mission, Vision, Programs
- Strategic Planning
- Strategic Issues

### Ambassadorship

- Advocacy & Public Policy
- Fundraising

### Financial Oversight & Accountability

- Financial Oversight  
& Sustainability



## CULTURE (HOW) Leadership & Board Dynamics

### Board Development

- Role Clarity
- Orientation
- Assessment

### Board Dynamics

- Chair & Board Succession Planning
- Group Dynamics & Board Member Engagement

### CEO Relations

- Constructive Partnership
- Evaluation & Compensation
- CEO Succession Planning

# Ten Basic Board Responsibilities

## Establish Strategic Direction

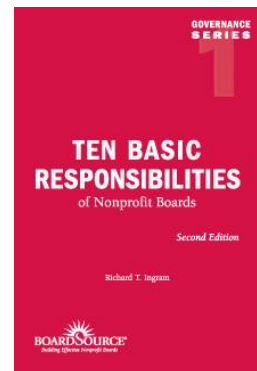
1. Determine mission and purpose
4. Ensure effective planning

## Ensure the Necessary Resources

2. Select the chief executive
6. Ensure adequate financial resources
8. Build a competent board
10. Enhance the organization's public standing

## Provide Oversight

3. Support and evaluate the chief executive
5. Monitor and strengthen programs and services
7. Protect assets and provide financial oversight
9. Ensure legal and ethical integrity



# Agenda – Fiduciary Oversight

## **1. The Board’s Fiduciary Role**

- a) Financial Oversight
- b) Risk Management
- c) Program Monitoring and Evaluation
- d) Legal & Ethical Oversight
- e) Chief Executive Performance

## **2. Transparency and Confidentiality**

## **3. Optimizing Oversight**

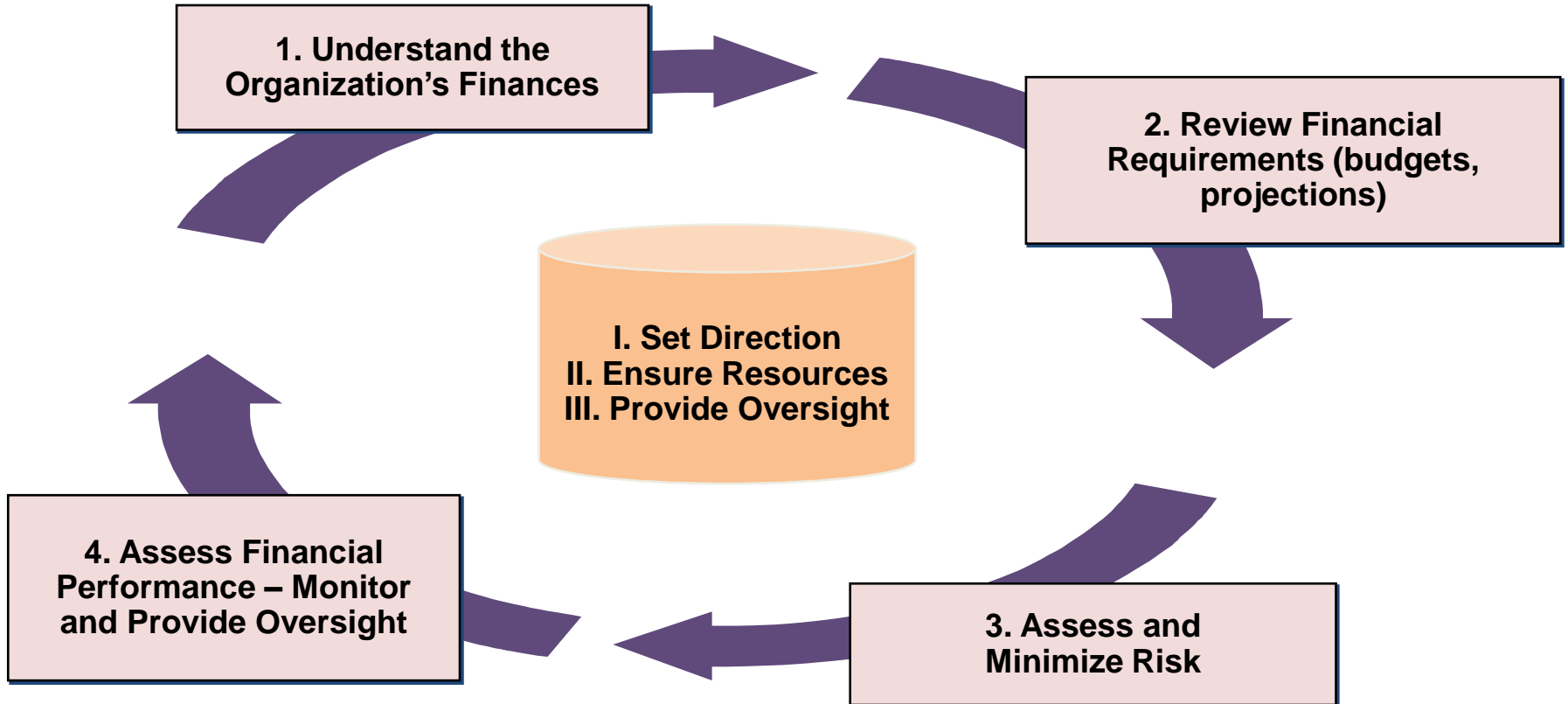




# a. Financial Oversight



# Board Role in Financial Oversight



*If you are experiencing technical issues with audio, please contact WebEx at this toll-free number: 1 866 229 3239*

# Basic Questions

- Is our financial plan consistent with our strategic plan?
- Have we run a gain or a loss?
- Is our projected cash flow adequate?
- Do we have sufficient reserves?
- Are any specific expense areas rising faster than their sources of income?
- Are our key expenses, especially salaries and benefits, under control?
- Are we meeting guidelines and requirements set by our funders?

# Adequate Financial Management

The full board participates in various ways,

- Ensure adequate resources
- Ensure Budget execution
- Participates in the strategic discussion and approves the Annual Budget

## **Ensure Budget oversight**

- Has a functioning Finance Committee, Audits and Investments Committees.
- Provides regular updates and financial reports to the full board.

## **Ensure Internal Controls**

# Adequate Financial Resources

- The full board participates in various ways, e.g.:
  - Board members can contribute financially
  - Board members can help develop a fundraising plan
  - Board members can support the chief executive's solicitation efforts
  - Board members can solicit
  - Board members can support organizational fundraising events and activities
- Regardless, it is always the board's responsibility to ensure adequate resources for the organization to remain financially viable

# Understand Your Organization's Finances

## Learn about where your money comes from.

- Understand what drives your revenue.
- Understand the importance of diversity in your funding streams; diversify further as necessary.
- Find out if cash, investments, or reserves are aligned with short- and long-term plans.

*If you are experiencing technical issues with audio, please contact WebEx at this toll-free number: 1 866 229 3239*

# Review Financial Requirements

**Learn about how much your organization needs to operate. Where is the money going? Are you budgeting effectively?**

- Budget versus actual revenues and expenses
- Debt payments
- Annual cash flow projections
- Investment performance and asset allocation



*If you are experiencing technical issues with audio, please contact WebEx at this toll-free number: 1 866 229 3239*

# Poll Question 2

**Which financial statements does your full board of directors review regularly? (Check all that apply.)**

- Annual budget
- Budget-to-actual statements
- Cashflow statements
- Balance sheets
- Other



*If you are experiencing technical issues with audio, please contact WebEx at this toll-free number: 1 866 229 3239*



# Form 990 - Governance

- Number of voting board members
- Family or business relationships between officers, directors, trustees, key employees
- Significant changes to organizational documents
- Contemporaneous minutes of board and committee meetings
- **Process to review 990**
- **Conflict of Interest Policy**
- **Whistleblower Policy**
- **Document Retention and Destruction Policy**
- **Process for determining compensation for CEO, officers, key employees**
- **Public availability of 1023 or 1024**

# Sarbanes-Oxley and Policy Implications

## Whistleblower policy

- Federal crime to retaliate against a “whistleblower”
- Policy should state, unequivocally, that fraudulent actions are not tolerated.
- Include a confidential reporting mechanism.

## Document retention and destruction policy

- Federal crime to alter, cover up, falsify, or destroy any document to prevent its use in an official proceeding.
- Policy should cover employee records, accounting and tax records, legal documents, board-related records and e-mails and voicemails.
- Retention periods may be dictated by statute in some cases.

# How Are Board Members Accountable?

*IRS Form 990*



*Chief Exec  
Compensation*

*Conflict of  
Interest  
Policy*

*Risk Mitigation  
Policies*

*Whistleblower  
Policy*

# Financial Committees

## Finance Committee

- Fiscal policies
- Budgets
- Anticipates financial problems
- Educates the board
- Ensures reporting requirements

## Investment Committee

- Oversees organizational investments
- Selects and oversees external investment advisors
- Comprises individuals knowledgeable about investments

## Audit Committee

- Reviews and approves audit reports
- Manages the scope of the audit
- Selects external firm to provide the audit
- Ensures compliance and reporting
- Often responsible for review of 990

## Full Board

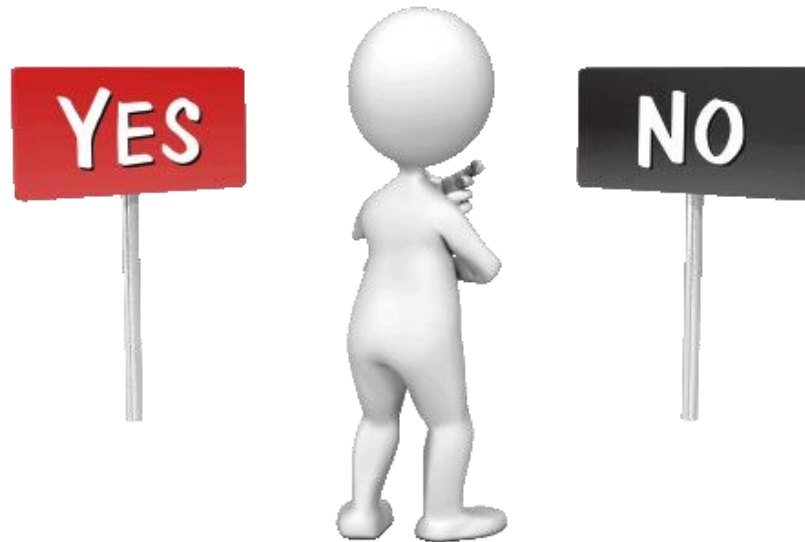
- Legally responsible for the financial success of the organization
- Prepare for meetings, including review of financial statements (Care)
- Disclose conflicts of interest (Loyalty)
- Mission fidelity (Obedience)

*If you are experiencing technical issues with audio, please contact WebEx at this toll-free number: 1 866 229 3239*

# Poll Question 3

**Do you review your IRS 990 with your full board?**

- a) Yes
- b) No
- c) Not sure
- d) Other



*If you are experiencing technical issues with audio, please contact WebEx at this toll-free number: 1 866 229 3239*

# BoardSource Governance Index 2014



Full board reviews 990 before submission

85%



Figures at comparable organizations considered before setting CEO's total compensation package

75%



Hire an auditor to conduct an annual external financial audit

89%



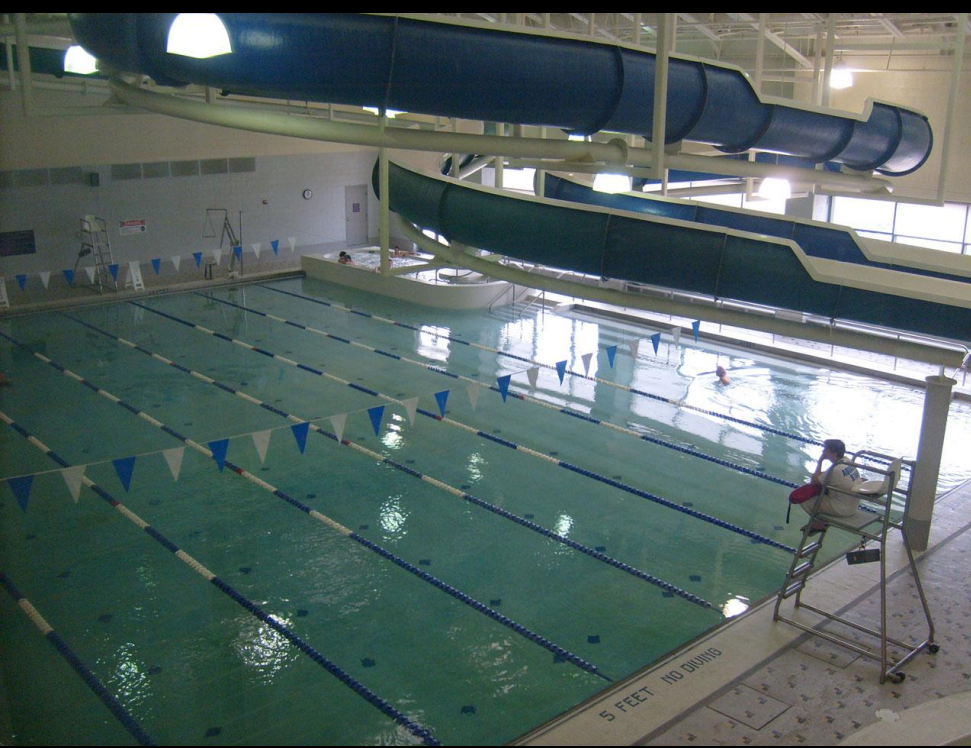
CEO assigns an "A" grade to board in financial oversight

42%

## b. Risk Management

### Goals of Risk Management:

- Emotional and physical safety of people
- Conserve assets for pursuit of mission
- Ensure legal compliance





# Protective Strategies

1. *Does our board periodically (every 2-3 years) review its insurance coverage to make sure it remains adequate and up-to-date?*
2. *Has the board ensured that the personnel policies include all the necessary clauses to help protect us from the most common legal actions?*
3. *Do we have an insurance policy that covers any indemnification costs if we ever had to indemnify a board member?*
4. *Does our D&O insurance cover defense costs as incurred or not until the proceedings are over?*



## c. Program Monitoring and Evaluation



- Monitoring – Are we doing what we said we would do?
- Evaluation – Are we doing the right thing?

# Basic Questions

- Is this program or service making enough of a difference for the people served?
- Is it cost-effective?
- To what extent is it still needed or wanted?
- Is there a more effective and efficient way to meet the need?
- What is another way to frame the issue we are trying to respond to?

# Dashboards

The quality of the decisions your board makes depends upon the quality of the information they receive and the resulting discussions in which they engage.

# Use of Dashboards: Why and How?

## What is the value of using a dashboard?

- Saves time
- Tracks progress
- Sheds light on system dynamics
- Points up potential problems
- Reveals patterns
- Expands board members' comfort zones
- Develops a shared knowledge base
- Focuses information from a governance perspective
- Reinforces board oversight

## What approaches can be used to define dashboard metrics?

- Outcomes
- Services and resources
- Mission as spine
- Strategic initiatives or drivers of success

Source: Lawrence M. Butler, author of *The Nonprofit Dashboard: Using Metrics to Drive Mission Success, Second Edition* (BoardSource, 2012).

# Linking Indicators to Mission Statement

## Mission Statement

Purpose	Audience	Methods	Outcomes
The Sample Museum of Natural History tells the story of our planet and its inhabitants...	to families and students of all ages...	through artifacts, specimens, and programs that reveal the process of scientific research...	leading to an appreciation of how scientists answer current questions while raising new ones.

## Performance Indicators

Number of exhibits and programs that use stories and engaging narratives.	Percentage of admissions, memberships, and other participants who are families and students, by age.	Involvement of scientists in presenting their research results.	Visitor responses re: lessons learned about scientific method of inquiry; before & after appreciation of scientific research.
---	--	---	---

# Linking Indicators to Strategic Issues

## Issue: INFLUENCING THE SELECTIVITY OF THE INSTITUTION

Questions	Key Indicators
How successful is the institution in retaining students through graduation?	Retention index (percentage of freshmen who graduate)
What would be the impact on the applicant pool of changing student selectivity?	Projected number of qualified applicants based on SAT or ACT cutoff scores.

# Governance or Management-Related?

## Dashboard convey...

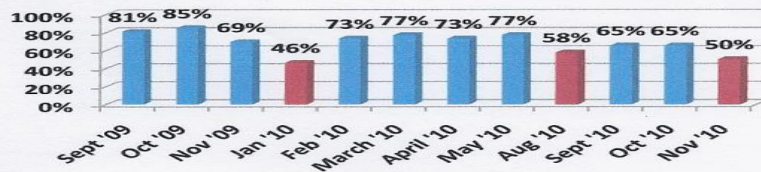
- information that helps the board do those things that the board is ultimately responsible for?
- how we're doing in achieving our goals as an institution?
- the best practices for achieving desired outcomes?
- a critical or high-risk problem in time to take corrective action?
- information that may cause the board to substitute its judgment for that of staff?
- a level of detail that invites micro-management or masks the significance of the data?



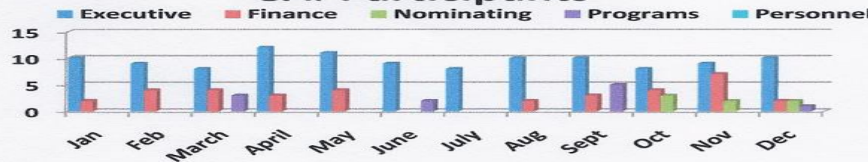
# Governance Dashboards

## ACME Nonprofit for Everything Good Board of Directors Dashboard as of January 2011

### % Board Meeting Attendance (26 Members; 9 Meetings Annually)



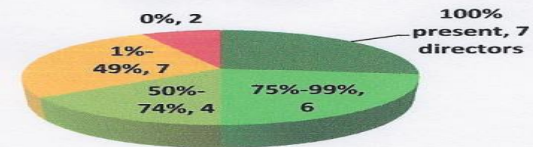
### Committee Meetings & # Participants



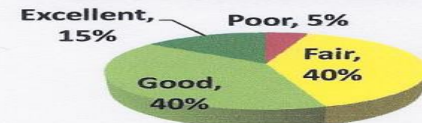
Priority	Organization Goal/Objective	Status
A	ACME is growing its programs & services	
5	Innovate new and improved activities	
2	Recruit/retain necessary volunteers	
1	Reach an increasing number of participants	
9	Maintain funding commensurate with service delivery	
10	Validate workplan initiatives against expected results	
B	ACME's policy voice is sought out and influential on "Everything Good"	
3	Be the primary source for data, policy examples, & best practices information	
8	Educate key decision-makers	
C	ACME is the premier network/partner for like-minded orgs	
4	Engage state/local groups as active participants in forums	
6	Develop "inter/intra-state" solutions/standards	
7	Share best practices among groups	

**\$Finance Tweet:** Income -17% (contributions & investments), but expenses cut (2 staff positions) for slight year-end surplus 2 stabilize "6-month" net assets\$

### Individual Member Attendance



### Overall Rating of Last Board Meeting



### Director Contributions



### Other Board Actions:

- 100% completed required signed COI Annual Disclosure
- 49% sent advocacy letters in 2010
- 35% attended most recent Community Info Event
- 15% made thank you calls to sponsors
- 3 board positions still open
- Carryover project from '09 & '10—CEO Succession Plan

# Organizational and Board Assessments

- **How are we doing...**
  - in terms of our mission and strategic goals?
  - in terms of the needs of the neighborhood or service area?
  - in comparison with like organizations?
- **Determine...**
  - what information is needed, from whom, and in what format
  - whether to use an external agency and to what extent

# Poll Question 4

**Does your board have a process for reviewing mission focused strategic and program data?**

- a) Yes
- b) No
- c) Not sure
- d) Other



# d. Legal & Ethical Oversight



# Legal Duties of the Board and Board Members



# Legal Duties

## Duty of Care

- Attend board & committee meetings
- Prepare, participating, pay attention
- Exercise independent judgment
- Review “stuff”

## Duty of Loyalty

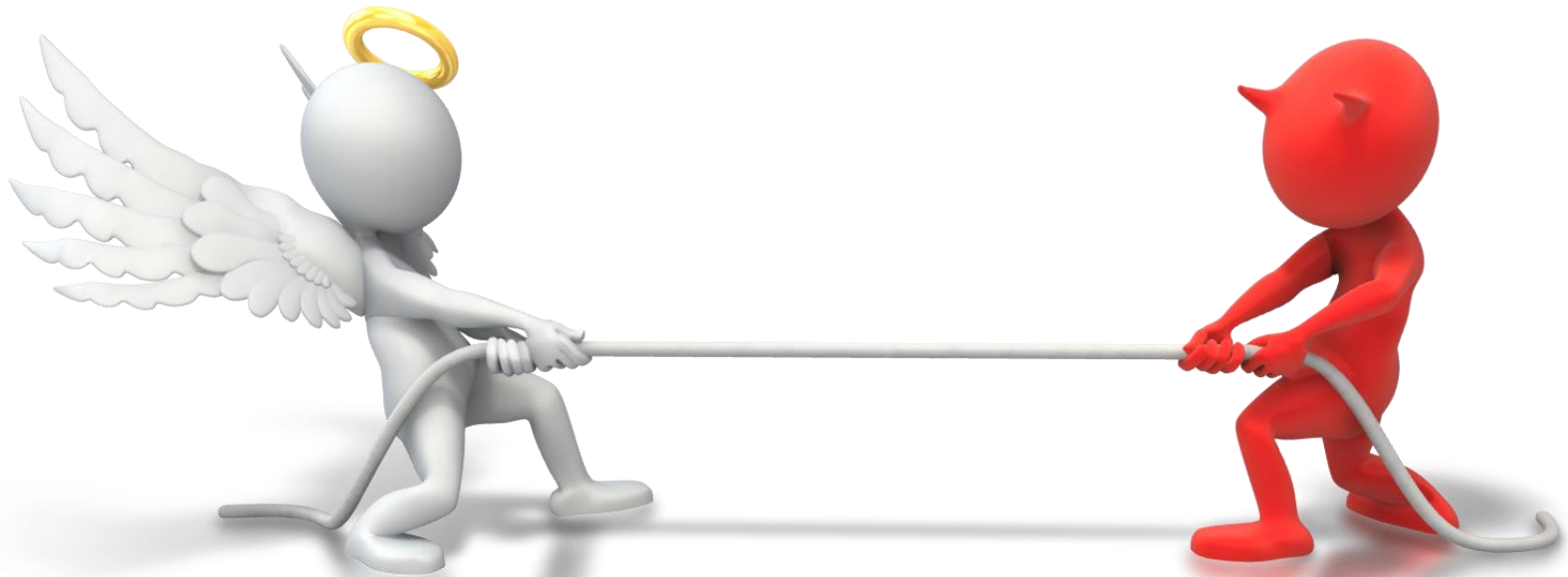
- Adhere to conflict of interest policy
- Avoid use of corporate opportunities for personal gain
- Maintain confidentiality of information about the organization

## Duty of Obedience

- Comply with regulatory & reporting requirements
- Examine governance documents
- Staying true to the organization’s mission

# Conflict of Interest

Exists when a board member, officer, or management employee has a personal interest that is in conflict with the interests of the organization, such that he or she may be influenced by this personal interest when making a decision for the organization.



# Conflict-of-Interest Policy

- **Disclose**

Persons in decision-making roles make known their connection with groups or individuals doing business with a nonprofit. Information provided annually.

- **Abstain**

Abstain from voting on any actual or potential conflict-of-interest transaction.

- **Record**

Recusal is noted in the minutes.



# Poll Question 5

**Does your board have a policy that require acknowledging Conflicts of Interest?**

- a) Yes
- b) No
- c) Not sure
- d) Other



## e. Chief Executive Performance

# Goals

1. Planning & Admin
2. Financial Management
3. Fundraising & Advocacy

# Executive Compensation



- Position Description, Annual Performance Plan and Evaluation
- Salary and wages, bonuses,
- Severance payments, deferred payments, retirement benefits, fringe benefits
- Emergency Succession Plan, Succession Plan Policy and Departure- Defined Succession Plan

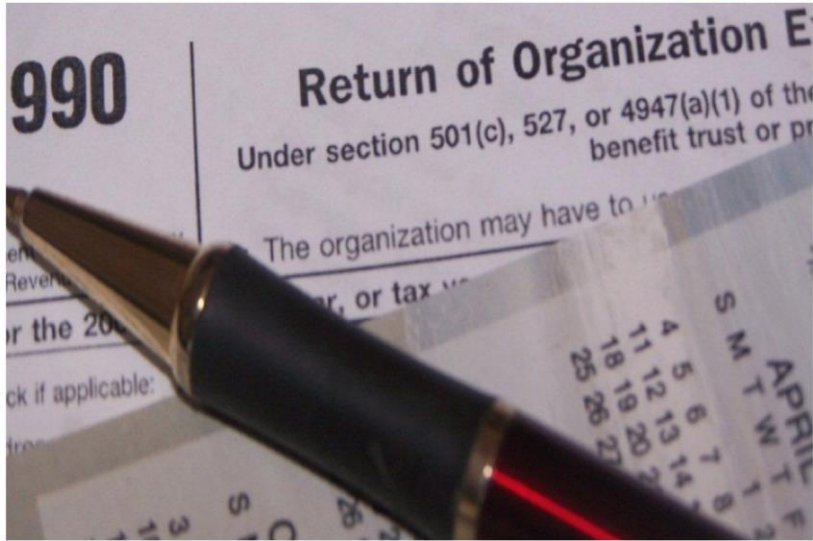
# Executive Compensation Safe Harbor

- Review and approval by governing body or compensation committee (without conflict of interest with respect to a compensation arrangement)
- Use of comparable data
- Contemporaneous documentation and recordkeeping of deliberations and decisions

## 2. Transparency and Confidentiality



# Transparency & IRS Form 990



**Part VI: Governance,**  
Management, and Disclosure

**Part VII: Compensation** of  
Officers, Directors, Trustees, Key  
Employees, Highest Compensated  
Employees, and Independent  
Contractors

# Beyond the Form 990: Transparency

- The Basics**
- Open communication
  - All board members have access to the same information
- 

- External Transparency**
- Annual reports, board and staff lists, and 990 on Web site
  - Proactive sharing of good and bad news
- 

- Being Proactive**
- Hard questions are asked
  - Hard truths are spoken

# Transparency vs. Confidentiality

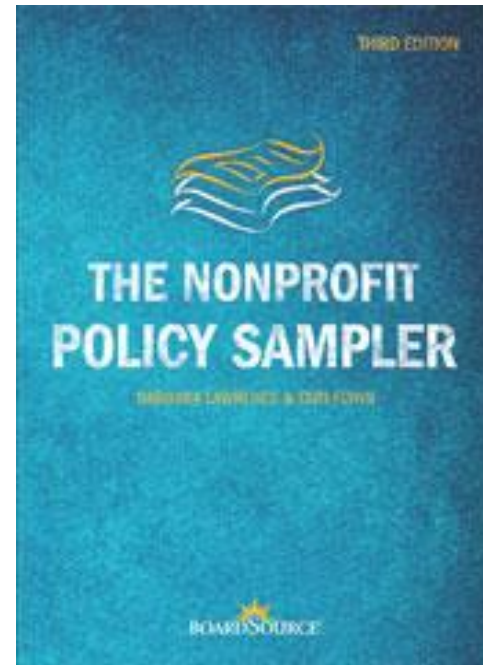
- Board confidentiality
- Dealing with a breach
- Electronic communications





# Types of Policies

1. *Ethics and Accountability*
2. *Board and Board Members*
3. *Chief Executive*
4. *Finance and Investments*
5. *Fundraising*
6. *Personnel*
7. *Communications*
8. *Committees*



# Ethics and Accountability Policies

**Section B. Policies** *(This Section B requests information about policies not required by the Internal Revenue Service.)*

- 10a** Did the organization have local chapters, branches, or affiliates? . . . . .
- b** If "Yes," did the organization have written policies and procedures governing the activities of affiliates, and branches to ensure their operations are consistent with the organization's exempt status? . . . . .
- 11a** Has the organization provided a complete copy of this Form 990 to all members of its governing body? . . . . .
- b** Describe in Schedule O the process, if any, used by the organization to review this Form 990 . . . . .
- 12a** Did the organization have a written conflict of interest policy? *If "No," go to line 13* . . . . .
- b** Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts? . . . . .
- c** Did the organization regularly and consistently monitor and enforce compliance with the policy? *In Schedule O how this was done* . . . . .
- 13** Did the organization have a written whistleblower policy? . . . . .
- 14** Did the organization have a written document retention and destruction policy? . . . . .
- 15** Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberations? . . . . .
- a** The organization's CEO, Executive Director, or top management official . . . . .
- b** Other officers or key employees of the organization . . . . .
- If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions)

- 1. Code of Ethics**
- 2. Confidentiality**
- 3. Conflict of Interest**
- 4. Mission**
- 5. Record Retention and Destruction**
- 6. Values**
- 7. Whistleblower Protection**

# 3. Optimizing Oversight

1. *Timely submission of IRS 990*
2. *Transparency*
3. *Audits and basic financial literacy for all board members*
4. *Conflict of Interest Policy*
5. *Approval of compensation for CEO and senior staff*
6. *Regular review of bylaws, policies, and insurance*
7. *Dashboards*
8. *Assessments*
9. *Informed Board Members*
10. *Engaged governance and decision-making*

# Thoughts, Reactions, ...



# Thanks



BoardSource 750 9<sup>th</sup> St NW Ste 650 Washington, DC 20001  
Phone: 202-349-2500 Fax: 202-349-2599 [www.boardsource.org](http://www.boardsource.org)