

ALLIANCE FOR
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NONPROFIT HEALTH CARE



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Alliance Comments and Recommendations on the Independent Sector Nonprofit Panel's Proposed Principles of Effective Practice for Charitable Organizations

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In early January 2007 the Nonprofit Panel of the Independent Sector issued for public comment a set of 29 proposed principles of effective practice for charitable organizations, noting that “a strong system of self-regulation and education is critical to enable the people making up the nonprofit community -- boards, staff, volunteers, and donors -- to ensure that their organizations are living by the highest ethical standards.”

An advisory committee comprised of 34 leaders from charities, foundations, and academic institutions assisted in developing the principles, examining the standards and principles established by over 50 self-regulation and accreditation systems that monitor different types of charitable organizations. The advisory committee has recommended that all charitable organizations aspire to follow these principles and that all major organizations (public charities with at least \$1 million in annual revenues and private foundations with at least \$25 million in assets) should implement these practices.

The Alliance appreciates the opportunity to comment on these principles. To follow are the Alliance's comments and recommendations on the principles, which are appended for ease of reference.

Overall, the Alliance is pleased with and supportive of almost all of the proposed principles, which are very consistent with those set forth in the Alliance's own guidelines on governance practices for nonprofit health care organizations¹, adopted by the Alliance's Board in May 2005 and subsequently shared with the Nonprofit Panel. The Alliance also commends the Panel for the background information and rationale provided under each principle.

Because effective practices start at the top of the nonprofit organization—its governance, the Alliance urges the Panel to expand upon its principles to include the following:

¹ “Advancing the Public Accountability of Nonprofit Health Care Organizations: Guidelines on Governance Practices”, available in the reports section of the Alliance website, www.nonprofithealthcare.org.

- The Board ensures that information brought to it is relevant, clear, concise, and accurate, and is provided sufficiently in advance of meetings to allow for meaningful Board analysis, discussion and decision-making (The provision of information in advance of meetings is discussed in the rationale for Principle # 13, but we believe it should be part of Principle # 13 itself)
- The Board ensures that minutes are recorded of all discussions and actions in all meetings of the Board and board committees
- The Board plans for the succession of the Board chair, other Board positions, the position of Chief Executive Officer (CEO), and other key executive positions
- The Board adopts a formal statement of director qualification standards for determination of director independence
- The number of other public or private company boards on which a director may serve is determined by policy or case-by-case review
- While all major decisions should be determined by the Board as a whole, larger nonprofit organizations have at a minimum standing committees with charters, composed of independent directors, responsible for audit, compensation (or human resources more generally) and governance and nominations. These committees have the sole authority to select, direct, retain and terminate independent consultants
- For purposes of preserving the Board's independence as well as ensuring clear and candid communication among directors and with the CEO, at least several times a year, on a prescheduled basis, directors meet in executive session without the presence of management
- A code of conduct and corporate responsibility program are developed by management and approved by the Board

The Alliance also offers some refinements in several of the principles:

- Principle # 6 on public disclosure is very general and could be enhanced by including some of the points discussed in the rationale, such as providing on the organization's website a list of directors and executives, the mission, summary information on programs, and financial and other performance results, including a description of the organization's contributions to the community
- Principle # 11 on CEO evaluation and compensation may be subject to multiple interpretations, and we believe should be modified to state that the CEO's performance should be subject to a formal annual review and any changes in CEO compensation should be market and performance-based. Also, in the background section, the statement that nonprofit compensation is on average substantially lower than counterparts in the for-profit and government sectors appears to contradict the subsequent statement that nonprofits often find it necessary to provide comparable compensation packages to compete for workers and executives with for-profit and government employers
- Principle # 14 calls for Board and director evaluations at least every three years. We believe that such evaluations should be annual, recognizing that the depth of the evaluations may vary from year-to-year

- Principle # 28 may require some clarification, as we do not find it unreasonable that internal or external fundraisers would have their compensation linked to, although not entirely determined by, the degree to which fundraising goals have been met

APPENDIX

INDEPENDENT SECTOR NONPROFIT PANEL'S PROPOSED PRINCIPLES OF EFFECTIVE PRACTICES FOR CHARITABLE ORGANIZATIONS

PRINCIPLES FOR FACILITATING LEGAL COMPLIANCE

- 1. A charitable organization should be knowledgeable about and must comply with all applicable laws and regulations and international conventions.**
- 2. 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 of the organization.**
- 3. A charitable organization must adopt and implement policies and procedures to ensure that all conflicts of interest, or the appearance thereof, within the organization and the board are avoided or appropriately managed through disclosure, refusal, or other means.**
- 4. A charitable organization must establish and implement policies and procedures that enable individuals to come forward with credible information on illegal practices or violations of organizational policies. This "whistleblower" policy must specify that the organization will not retaliate against individuals who make such reports.**
- 5. A charitable organization must establish and implement policies and procedures to protect and preserve the organization's important documents and business records.**
- 6. A charitable organization must make information about its operations, including its board members, finances, programs and activities, and methods used to evaluate the outcomes of work, widely available to the public.**

PRINCIPLES FOR EFFECTIVE GOVERNANCE

- 7. The board of a charitable organization must meet regularly enough to conduct its business and fulfill its duties. The board should hold at least three meetings per year.**

8. The board of a charitable organization should establish and review periodically its size and structure to ensure effective governance and to meet the organization's goals and objectives. The board should have a minimum of five members.

9. The board of a charitable organization should include members with the diverse skills, background, expertise, and experience necessary to advance the organization's ability to fulfill its mission. The board should include or have access to some individuals with financial literacy.

10. A substantial majority of the board of a public charity should be independent-- that is, individuals (1) who are not compensated by the organization as an employee or independent contractor; (2) whose own compensation is not determined by individuals who are compensated by the organization; (3) who do not receive, directly or indirectly, material financial benefits from the organization except as a member of the charitable class served by the organization; and (4) who are not related to (as a spouse, sibling, parent or child) or do not reside with any individual described above.

11. The board must hire, supervise, and evaluate the performance of the chief executive officer of the organization, as well as approve annually and in advance the compensation of the chief executive officer unless there is a multi-year contract in force or there is no change in the compensation except for an inflation or cost-of-living adjustment.

12. The board of a charitable organization that has paid staff should ensure that the positions of chief executive officer, board chair, and treasurer are held by separate individuals.

13. The board should establish an effective, systematic process for educating and communicating with board members to ensure that the board carries out its oversight functions and that individual members are aware of their legal and ethical responsibilities.

14. Board members should evaluate their own performance as a group and as individuals no less frequently than every three years. The board should establish clear policies and procedures on the length of terms and on the removal of board members.

15. The board must review organizational and governing instruments no less frequently than every three years.

16. The board should establish or review goals for implementing the organization's mission on an annual basis and evaluate programs, goals, and activities to be sure they are consistent with the mission no less frequently than every three years.

17. Board members are generally expected to serve without compensation, other than reimbursement for expenses incurred to fulfill their board duties. Charitable organizations that provide compensation to board members must make available to anyone, upon request, relevant information that will assist in evaluations of the reasonableness of such compensation.

PRINCIPLES FOR STRONG FINANCIAL OVERSIGHT

18. 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 and prudently. The full board must review and approve the organization's annual budget and should monitor actual performance against the budget.

19. A charitable organization must keep complete and accurate financial records and should have a qualified, independent financial expert audit or review them annually in a manner appropriate to the organization's size and scale of operations.

20. A charitable organization must not provide loans (or the equivalent¹⁰) to directors or trustees.

21. A charitable organization must spend a reasonable percentage of its annual budget on programs in pursuance of its mission. An organization must also provide sufficient resources for effective administration of the organization, and, if the organization solicits contributions, for appropriate fundraising activities.

22. A charitable organization must establish and implement policies that provide clear guidance on its rules for paying or reimbursing expenses incurred when conducting business or traveling on behalf of the organization, including the types of expenses that can be paid for or reimbursed and the documentation required.

PRINCIPLES FOR RESPONSIBLE FUNDRAISING PRACTICES

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

24. Contributions must be used for the purposes described in the relevant solicitation materials, in the way specifically requested by the donor, or in a manner that reflects the donor's intent.

25. Charitable organizations must provide donors with appropriate acknowledgments.

26. Charitable organizations should implement clear policies, based on the organization's exempt purpose, to determine whether accepting a gift is in the best interests of the organization.

27. 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 that they do not employ techniques that are coercive, intimidating, or intended to harass potential donors.

28. Organizations should not compensate internal or external fundraisers based on a commission or a percentage of the amount raised.

29. A charitable organization must respect the privacy of individual donors and must not sell or otherwise make available the names and contact information of its donors without prior permission, except where disclosure is required by law.