

Guide to Sample Form 990 Nonprofit Governance Policies

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This guide focuses on governance-related policies envisioned in the newly revised IRS Form 990 tax return for tax-exempt entities, effective with the 2008 tax year. The new Form 990 and its instructions are available at <http://www.irs.gov/charities/article/0,,id=185561,00.html>. This guide also addresses issues discussed in the IRS Guidance on Governance and Related Topics for 501 (c) (3) Organizations, available at http://www.irs.gov/pub/irs-tege/governance_practices.pdf. Although the Guidance is not a regulation and formally only applies to public charities, it states that other tax-exempt organizations should consider addressing the topics raised in the Guidance.

Part VI, Section B, of the new Form 990 relates to Governance Policies. Section B inquires about the following specific policies: (1) conflict of interest (including monitoring and enforcement of the policy), (2) whistleblower policy, (3) document retention and destruction policy, and (4) key employee compensation policy. Part XI, line 2c asks, “[D]oes the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?” This question prompts requests for an audit committee charter. The policy compilations reviewed below are discussed primarily in regard to their effectiveness in providing useful sample forms for the governance policies promoted by the new Form 990.

The Guidance, in addition, mentions investment and fundraising policies, which are of increasing importance to nonprofits. Many of the more comprehensive resources for sample policies mentioned below and in the accompanying online policies compilation may contain sample investment and fundraising policies. Such policies typically need to be highly customized for the needs of the particular organization. In addition, Part VI, Section A, Governing Body and Management, asks about policies for ensuring consistency of operations of constituent units with the central organization. While this is not a concern for most nonprofits, it is a concern for organizations with subordinate or component units. Very often subordinate or component unit relations are addressed in such organizations’ bylaws but not in the detail expected in the Form 990. There is a dearth of subordinate/component-unit -relations policies in available resources and most state nonprofit corporation statutes fail to provide significant guidance. This is an area of concern for the IRS, which has recently considered and rejected dropping group exemptions. Because subordinate/component-unit relations vary considerably from entity to entity, no one-size-fits-all policy is likely to work for all organizations. The need for a highly customizable sample policy is significant.

Form 990, Part VI, Section A, line 8, requests information on whether the organization’s governing body and committees with the power to act contemporaneously document meetings. The Guidance interprets this question by indicating that traditional meeting minutes are one means by which an organization may permissibly document its actions. While a minutes “policy” is not a necessary document, nonprofits need to adopt a

standardized method of keeping minutes, especially in light of the new Form 990 inquiry. The addendum below provides guidance on adopting a minutes procedure from existing resources.

It should be noted that certain state statutes include a default conflict-of-interest policies. For example, NY Not-for-Profit Corporation Law § 715, which provides a conflict-of-interest policy that may be made stricter only through a provision in the certificate of incorporation. In California, Cal. Corp. Code § 7233 provides a mandatory conflict-of-interest procedure applicable to mutual benefit nonprofit corporations.

United States Internal Revenue Service, Instructions for Form 1023 (application for 501 (c) (3) charitable status), available at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>, contain a sample conflict-of-interest policy for hospitals that is customizable to address other types of nonprofits. Practitioners should be aware of this barebones conflict-of-interest policy. This model is very basic and not suited, without modification, to the circumstances of many organizations. Often, small nonprofits founded by volunteers adopt the IRS model unchanged early in their lifecycles as part of their Form 1023 application process. Customization by counsel of this basic form to suit the needs of a particular organization at later stages in its lifecycle is often necessary.

I. Governance Policy Annotated Bibliography

Edward J. McMillan, CPA, CAE, *Model Policies & Procedures for Not-for-Profit Organizations* (John Wiley & Sons 2003). This book, an earlier edition of which was titled *Model Accounting and Financial Policies & Procedures Handbook for Not-for-Profit Organizations*, attempts to provide a general, all purpose handbook for nonprofit policies. Given the accounting background of the author and the earlier title of the book, it is not surprising that this compilation's strength in form policies is in policies dealing with financial issues. Given this emphasis, the draft audit committee charter/"sample policy" (as denominated in the book) is surprisingly short and vague. The "document shredding" policy has no retention dates for different categories. It simply lists broad categories of documents to be shredded. There is a separate record retention policy. The policy itself is extremely short and general. There is a three-page form record retention information sheet, listing categories of documents and suggested retention dates and incorporating a document destruction form. The conflict-of-interest policy and draft conflict policy acknowledgment form are extremely open-ended and bereft of detail. The guide also mentions a code of ethics. However, it does not provide a sample code of ethics. There is no whistleblower policy, key employee compensation policy, or subordinate unit policy. Wiley is one of the leading publishers of practical materials for business and the premier for-profit publisher for nonprofit management and governance topics. This policy guide may serve a nonprofit well for everyday administrative forms and procedures. Its form policies in the governance area, however, are seriously lacking.

Barbara Lawrence and Outi Flynn, *The Nonprofit Policy Sampler* (BoardSource 2d ed. 2006) with CD-ROM. Boardsource (formerly the National Center for Nonprofit Boards) provides materials geared towards board-run nonprofits. The policy sampler is not lengthy, but it is well written and easy to understand. The book contains general guidance in a number of significant areas, with a variety of samples of a number of key governance policies on the accompanying CD-ROM: code of ethics (typically including a conflict-of-interest policy), conflict-of-interest, whistleblower, record retention and destruction, executive compensation, and separate sections on financial audits and financial committees (with audit committee charters on the CD). There is no policy on constituent unit relations. The materials in the book discuss relevant considerations in developing policies regarding the various topics, such as practical tips, key elements, and suggested resources. Often the hardcopy will contain one sample policy in a topic area, but the CD-ROM will contain a number of policies relating to the topic, of varying degrees of complexity. The sample policies in hard copy in the book are quite simple. Some of the more detailed sample policies on the CD might form the basis of a legally drafted policy for a nonprofit organization, but any of the sample forms would have to be tweaked significantly to take legal and regulatory requirements and preferred practices into account.

Robert C. Harris, CAE, *How to Create a Policy Manual—Associations, Chambers, and Nonprofit Organizations* (self-published 2004). This publication aims to give advice on how to draft a policy in addition to providing form policies. The sample policies included cover a wide variety of administrative issues. The guide provides a barebones financial audit policy that includes a brief description of an audit task force task assignment and an extremely simple sample record retention policy covering approximately three different categories of records. There is a code of conduct that proscribes conflicts of interest without defining them or providing procedures for handling them. There is a half-page “whistleblower clause” that contains little detail. This guide may provide basic outlines for small nonprofits with very unsophisticated needs, but the lack of detail on governance policies could cause more harm than help. Harris’s online site contains a wealth additional information for nonprofits, including governance-related information, <http://www.nonprofitcenter.com>. Much of the material is available free. Unfortunately, there are no direct webpage links, so each article and sample must be reached by navigating through nested layers of categories on the sidebar. For example, there is a document entitled *Policy Samples Packet for IRS 990* that contains conflict-of-interest and record retention policies and a sample audit committee charter. It can be found under the *Management Tips & Templates* sidebar, subcategory *Boards and Leadership*.

Jerald A. Jacobs, *Association Law Handbook: A Practical Guide for Associations, Societies, and Charities* (American Society of Association Executives 4th ed. 2007) with CD-ROM. This book is primarily intended as a general legal resource for the association executives, so it is geared towards the educated lay audience. The accompanying CD-ROM includes some form policies that are also included in the text. The materials on the CD include a fairly detailed

conflict-of-interest policy, together with a disclosure form, a sample Code of Ethics that mentions conflicts of interest, a fairly simple records retention policy with a number of different categories and suggested retention periods, an excess benefits model resolution, a model CEO employment agreement and a model non-CEO employment agreement. From the latter three documents, an author could piece together a key employee compensation policy. This compendium does not contain a model whistleblower policy, constituent unit policy, or audit committee charter (although a barebones description of audit committee composition and duties is included in model bylaws). This reference work is not intended primarily as a resource for model governance policies. Still, with the availability of a CD-ROM and authorship by a lawyer, this book might provide some practical guidance on policy drafting.

John Carver and Miriam Mayhew Carver, *Reinventing Your Board: A Step-by-Step Guide to Implementing Policy Governance* (Jossey-Bass 1997). This book, by the primary theorist of the “policy governance” theory of nonprofit governance, includes a sample board policy manual in an appendix. The sample manual contains a model policy for executive limitations on compensation and benefits and a board members’ code of conduct. In keeping with the “policy governance” theory, the nonprofit board is to minimize the number of committees and to supervise the organization only through the Chief Executive Officer and is not to have any direct ties with other organizational employees. This theory and some of the model policies included in this sample policy manual may make the board’s legally mandated oversight role difficult, particularly its financial oversight role typically realized through the audit committee and typically requiring close interaction with the organization’s chief financial officer.

Jack B. Siegel, *A Desktop Guide for Nonprofit Directors, Officers, and Advisors: Avoiding Trouble While Doing Good* (John Wiley & Sons 2006) with CD-ROM. This reference contains excellent guidance in many areas of nonprofit governance and management. While the book is not intended primarily as a compendium of policy forms, a number of sample policies are included in the text, including a sample whistleblower policy and useful list of suggested document retention periods for various categories of documents. The text contains good discussions of the need for conflict-of-interest and gift policies, but does not include policy samples in these areas. The CD-ROM contains cases, Congressional reports, and IRS forms, but no sample policies.

Policies in American Bar Association Materials:

George W. Overton & Jeannie Carmedelle Frey, eds., *Guidebook for Directors of Nonprofit Corporations* (American Bar Assn. 2d ed. 2002), pp. 243–47, contains a conflict-of-interest policy primarily geared towards health-care entities, but capable of modification for use in other nonprofit organizations. Pp. 53–54 contain a description of an audit committee’s duties and composition that could be readily transformed into an audit committee charter.

Lisa A. Runquist, *The ABCs of Nonprofits* (American Bar Assn. 2005) contains a sample conflict-of-interest policy at pp. 113–19.

Victor Futter & Lisa A. Runquist, eds., *Nonprofit Resources* (American Bar Assn. 2d ed. 2007) does not contain any sample policies itself, but points in the direction of a number of possible sources. There is a lengthy list of internet resources for nonprofits. There are also resources listed on audit committees, compensation, conflicts of interest, and records retention.

Victor Futter, ed., *Nonprofit Governance & Management* (American Bar Assn. 2002) contains a number of sample governance policies, including a comprehensive audit committee charter (pp. 160–62), sample conflict-of-interest policies (pp. 199–213), and a sample records retention policy and accompanying forms (pp. 523–26). The book also contains a good discussion of considerations involved in executive compensation, pp. 163–77, but without a sample policy.

Addendum on Minutes:

Most traditional parliamentary authorities provide guidance on preparing minutes and a minute template. See, e.g., George Demeter, *Demeter's Manual of Parliamentary Law & Procedure* (Little Brown & Co. Blue Book ed. 1969) pp. 21–25; Ray E. Keesey, *Modern Parliamentary Procedure* (American Psychological Assn. rev. ed. 1994) p. 84; Henry Martin Robert, *Robert's Rules of Order Newly Revised* (Perseus Publishing 10th ed. 2000) pp. 451–58; Henry M. Robert, III, et al., *Robert's Rules of Order Newly Revised in Brief* (Da Capo 2004) pp. 146–50; Alice Sturgis, *The Standard Code of Parliamentary Procedure* (McGraw Hill 4th ed. 2001) pp. 198–202. In addition, some ABA materials provide sample guidance for preparing minutes for nonprofit organizations. Donald A. Tortorice, *The Modern Rules of Order* (American Bar Assn. 3d ed. 2007) pp. 35–39; Victor Futter, ed., *Nonprofit Governance & Management* (American Bar Assn. 2002) p. 119.

II. Online Resources

A. Organization-Specific Policies available online

Bill & Melinda Gates Foundation

Conflict-of-interest and “ethical conduct and governance” (whistleblower) policies:

<http://www.gatesfoundation.org/about/Pages/conflict-of-interest.aspx>

<http://www.gatesfoundation.org/about/Pages/ethical-conduct-and-governance.aspx>

Ford Foundation

Links to codes of ethics for staff and trustees; Board committee charters; bylaws; complaints procedure for financial matters; and more:

<http://www.fordfound.org/about/governance>

The J. Paul Getty Trust

Variety of corporate governance policies, including conflicts policies for both staff and trustees:

<http://www.getty.edu/about/governance/policies.html>

(This page also links to the California Attorney General's report on what went wrong with the Getty's corporate governance.)

The Nature Conservancy

Conflict-of-interest policy and conflict-of-interest standard operating procedure:

<http://www.nature.org/aboutus/leadership/art15486.html>

<http://www.nature.org/aboutus/leadership/art15491.html>

The following links to Board committee charters, including audit and compensation committees: <http://www.getty.edu/about/governance/committees.html#executive>

The Red Cross

Links to Code of Conduct, Ethics Rules and other related policies, such as audit and compensation committee charters:

http://www.redcross.org/services/governance/0,1082,0_234_00.html

See also Red Cross October 2006 Report *Governance for the 21st Century*. The Report discusses, the Board's role, composition, size and selection process; the role of a whistleblower policy; and transparency. http://www.redcross.org/static/file_cont5765_lang0_2202.pdf

B. Policy Guides by Broad-based Nonprofit Sector Organizations

The **Alliance of Artists Communities**, <http://www.artistcommunities.org>, publishes a well-regarded guide to help nonprofit artists communities function at optimum levels, *The Ultimate Residency Resource Guide*. It contains insights and sample policies that are applicable for most nonprofits, but is available for download only upon payment of a substantial fee:

<http://www.artistcommunities.org/products/complete-residency-resource-guide-electronic-version>

The organizational groundwork and organizational development sections of the *Resource Guide* are separately available at a lower fee and include most of the *Guide*'s governance policy samples: <http://www.artistcommunities.org/products/organizational-groundwork-section>

<http://www.artistcommunities.org/products/organizational-development-section>.

American Society of Association Executives, <http://www.asaecenter.org>. Site includes a large database of member-accessible material including some sample policies.

CompassPoint Nonprofit Services, in its *Board Café* feature, addressed conflict-of-interest policies in one of its monthly issues. Its sample policy is available at

<http://www.compasspoint.org/boardcafe/details.php?id=54>

Forum of Regional Association of Grantmakers, <http://www.givingforum.org>. Site includes a searchable database that contains model policies, including whistleblower policies, audit committee charters, document and record retention policies, conflict-of-interest policies, and personnel compensation policies. Some are publicly accessible. Most require membership.

The Foundation Center, www.foundationcenter.org, has an online public database that includes sample policies and references to other potential sources of policies in books and other resource materials. The database, the Catalog of Nonprofit Literature, is available at <http://cnl.foundationcenter.org>.

The Free Management Library by Carter McNamara, <http://www.managementhelp.org> Contains numerous links to various organizations (not all current). The area on Board Policies contains a sample whistleblower policy, a sample document retention policy, and a detailed discussion of conflict-of-interest issues:
<http://www.managementhelp.org/boards/boards.htm#anchor1322914>

Governance Matters (formerly the Alliance for Non-profit Governance, a New York-based and focused organization), www.governancematters.org, has an online page listing General Governance Resources, which includes references and weblinks to other nonprofit websites with governance content:

http://www.governancematters.org/index.cfm?organization_id=56§ion_id=801&page_id=3222

The Legal Oversight page has additional useful links, particularly for New York based nonprofits:

http://www.governancematters.org/index.cfm?organization_id=56§ion_id=801&page_id=3270

The Library of Forms does not yet contain significant content, but the organization intends to include samples there in the future:

http://www.governancematters.org/index.cfm?organization_id=56§ion_id=801&page_id=3270

Idealist.org, a “global clearinghouse of nonprofit and volunteering resources” has several samples of conflict of interest statements at <http://www.idealists.org/npofaq/16/59.html>.

Independent Sector

General ethics information is available at:

http://www.independentsector.org/members/code_main.html

There are also links here to much useful information on governance issues.

A compendium of links to different policies and standards, including a gift acceptance policy and standards for relations between nonprofits and businesses is available at:

<http://www.independentsector.org/issues/accountability/standards2.html>

The site includes a useful internal policy on financial responsibility and reporting that could be the basis of a good whistleblower policy:

<http://www.independentsector.org/about/finresp.html>

Panel on the Nonprofit Sector (convened by Independent Sector)

<http://www.nonprofitpanel.org>

This panel issued several reports to Congress detailing current views of non-profit corporate governance best practices. The reference edition of its Principles for Good Governance and Ethical Practice contains good explanatory materials and references on conflict-of-interest and whistleblower policies.

http://www.nonprofitpanel.org/Report/principles/Principles_Reference.pdf

National Council of Nonprofit Associations, <http://www.councilofnonprofits.org>

The site includes a sample whistleblower policy,
<http://www.councilofnonprofits.org/?q=whistleblower>

Many of NCNA's state affiliates have also developed their own sample policies. The **Pennsylvania Association of Nonprofits**, <http://www.pano.org>, has an audit committee charter sample and other policies available at <http://www.pano.org/standards/standards.php>. The **Minnesota Council of Nonprofits**, <http://www.mncn.org>, has a sample conflict-of-interest and ethics policy at http://www.mncn.org/info_paccountability.htm.

Nonprofit Coordinating Committee of NY, Inc., <http://www.npccny.org>. Site includes a databank that contains a number of publicly accessible policies, including Audit Committee Functions and Record Retention Policy model. Members only area includes conflict-of-interest policies and a whistleblower policy and other governance-related topics.

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