

NONPROFIT ISSUES

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5 Critical Policies for Nonprofits Webinar

Want to make your organization more effective? You need comprehensive governance policies that you actually follow.

The Form 990 tax information return requires nonprofits to report whether they have a conflict of interest policy, a whistleblower policy, and a document retention and destruction policy. Potential donors, the media, regulators, and careful job seekers will have greater confidence when an organization responds "yes" to the policy questions.

This webinar will do a deep dive into these three policies, plus a policy for setting compensation (to avoid excess benefits) and one for dealing with confidentiality of information. We will discuss the key components of each policy and study various sample policies to see how organizations can deal differently with different issues.

We will highlight policies promulgated and copyrighted by the Standards for Excellence Institute, the national program for ethics and accountability in the nonprofit sector. The Standards were originally developed by Maryland Nonprofits and are being promoted nationally with 10 replication partners, including the Pennsylvania Association of Nonprofit Organizations.

We'll cover the following:

- Conflict of Interest
- Whistleblower
- Document Retention
- Compensation
- Confidentiality

Tish Mogan, Standards for Excellence Director, from the Pennsylvania Association of Nonprofit Organizations will join Don Kramer, Esq., Editor of *Nonprofit Issues*. This program is offered in partnership with PANO, Pennsylvania Association of Nonprofit Organizations.

What is a webinar? A webinar is primarily a telephone conference call. You can participate alone or gather people around your conference phone and ask your questions. In addition to the audio portion, you can also follow along on-line as we review a PowerPoint presentation. Participants will receive a package of materials from *Nonprofit Issues*® and will have the opportunity to submit questions during the presentation.

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Tish Mogan & Don Kramer

**Thursday, April 25
1:30-3:00 PM ET**

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Thursday, April 25, 2019**

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5 Critical Policies for Nonprofits

Webinar

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Note on use of sample Crisis Management resources from the Standards for Excellence Educational Resource packet.

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To view the replication partners in various states and for contact information for the Institute, please go to: <https://standardsforexcellence.org/replication-partners/>.

The copyright language on the materials contains the contact information for Pennsylvania and the Institute. Other state contact information is found on the above website.

Appendix A: Sample Conflict of Interest Policy

Note. This Sample Conflict of Interest Policy is intended to provide an example of a conflict of interest policy for organizations. The sample conflict of interest policy does not prescribe any specific requirements. Therefore, organizations should use a conflict of interest policy that best fits their organization.

Note. Items marked *Hospital insert – for hospitals that complete Schedule C* are intended to be adopted by hospitals.

Article I **Purpose**

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II **Definitions**

1. Interested Person

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

[Hospital Insert – for hospitals that complete Schedule C

If a person is an interested person with respect to any entity in the health care system of which the organization is a part, he or she is an interested person with respect to all entities in the health care system.]

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that aren't insubstantial.

A financial interest isn't necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Article III **Procedures**

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement isn't reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV
Records of Proceedings

The minutes of the governing board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V
Compensation

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
 - b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
 - c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.
- [Hospital Insert – for hospitals that complete Schedule C***
- d. Physicians who receive compensation from the Organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.]

Article VI
Annual Statements

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Article VII
Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and doesn't engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and don't result in inurement, impermissible private benefit, or in an excess benefit transaction.

Article VIII
Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

MODEL CONFLICT OF INTEREST POLICY

I. Application of Policy

This policy applies to board members, staff and certain volunteers of ABC Nonprofit, Inc. A volunteer is covered under this policy if that person has been granted significant independent decision making authority with respect to financial or other resources of the organization. Persons covered under this policy are hereinafter referred to as “interested parties.”

II. Conflict of Interest

A conflict of interest may exist when the interests or concerns of an interested party may be seen as competing with the interests or concerns of the organization. There are a variety of situations which raise conflict of interest concerns including, but not limited to, the following.

Financial Interests - A conflict may exist where an interested party, or a relative or business associate of an interested party, directly or indirectly benefits or profits as a result of a decision made or transaction entered into by the organization. Examples include situations where:

- the organization contracts to purchase or lease goods, services, or properties from an interested party, or a relative, or business associate of an interested party;
- the organization purchases an ownership interest in or invest in a business entity owned by an interested party, or by a relative or business associate of an interested party;
- the organization offers employment to an interested party, or a relative, or business associate of an interested party, other than a person who is already employed by the organization;
- an interested party, or a relative or business associate of an interested party, is provided with a gift, gratuity or favor, of a substantial nature, from a person or entity which does business, or seeks to do business, with the organization;
- an interested party, or a relative or business associate of an interested party, is gratuitously provided use of the facilities, property, or services of the organization;
- [add additional examples, if any]

Other Interests - A conflict may also exist where an interested party, or a relative or business associate of an interested party, obtains a non-financial benefit or advantage that he would not have obtained absent his/her relationship with the organization, or where his/her duty or responsibility owed to the organization conflicts with a duty or responsibility owed to some other organization. Examples include where:

- an interested party seeks to obtain preferential treatment by the organization for himself, or relative, or business associate;

- an interested party seeks to make use of confidential information obtained from the organization for his own benefit, or for the benefit of a relative, business associate, or other organization;
- an interested party seeks to take advantage of an opportunity, or enable a relative, business associate or other organization to take advantage of an opportunity, which s/he has reason to believe would be of interest to the organization;
- [add additional examples if any]

III. Disclosure of Actual or Potential Conflicts of Interest

An interested party is under a continuing obligation to disclose any actual or potential conflict of interest as soon as it is known, or reasonably should be known.

An interested party shall complete a questionnaire, in the form attached hereto, to fully and completely disclose the material facts about any actual or potential conflicts of interest. The disclosure statement shall be completed upon his/her association with the organization, and shall be updated annually thereafter. An additional disclosure statement shall be filed at such time as an actual or potential conflict arises.

For board members, the disclosure statements shall be provided to the President (Chairman) of the Board, or in the case of the President's (Chairman's) disclosure statement shall be provided to the Secretary of the Board. Copies shall also be provided to the Chief Executive Officer of the organization.

In the case of staff or volunteers with significant decision-making authority, the disclosure statements shall be provided to the Chief Executive Officer of the organization, or in the case of the Chief Executive Officer's disclosure statement shall be provided to the President (Chairman) of the Board.

The Secretary of the board of directors shall file copies of all disclosure statements with the official corporate records of the organization.

IV. Procedures for Review of Actual or Potential Conflicts - Generally

Whenever there is reason to believe that an actual or potential conflict of interest exists between ABC Nonprofit, Inc. and an interested party, the Board of Directors shall determine the appropriate organizational response. This shall include, but not necessarily be limited to, invoking the procedures described in Section V, below, with respect to a specific proposed action or transaction.

Where the actual or potential conflict involves an employee of the organization other than the Executive Director, the Executive Director shall, in the first instance, be responsible for reviewing the matter and may take appropriate action as necessary to protect the interests of the organization. The Executive Director shall report to the President (Chairman) the results of any review and the action taken. The President (Chairman), in consultation with the Executive Committee, shall determine if any further board review or action is required.

V. Procedures for Addressing Conflicts of Interest - Specific Transactions

Where an actual or potential conflict exists between the interests of ABC Nonprofit, Inc. and an interested party with respect to a specific proposed action or transaction, ABC Nonprofit shall refrain from the

proposed action or transaction until such time as the proposed action or transaction has been approved by the disinterested members of the board of directors of the organization. The following procedures shall apply:

- An interested party who has an actual or potential conflict of interest with respect to a proposed action or transaction of the corporation shall not participate in anyway in, or be present during, the deliberations and decision making of the organization with respect to such action or transaction. The interested party may, upon request, be available to answer questions or provide material factual information about the proposed action or transaction.
- The disinterested members of the board of directors may approve the proposed action or transaction upon finding that it is in the best interests of the corporation. The board shall consider whether the terms of the proposed transaction are fair and reasonable to the organization and whether it would be possible, with reasonable effort, to find a more advantageous arrangement with a party or entity that is not an interested party.
- Approval by the disinterested members of the board of directors shall be by vote of a majority of directors in attendance at a meeting at which a quorum is present. An interested party shall not be counted for purposes of determining whether a quorum is present, nor for purposes of determining what constitutes a majority vote of directors in attendance.
- The minutes of the meeting shall reflect that the conflict disclosure was made, the vote taken and, where applicable, the abstention from voting and participation by the interested party.

VI. Violations of Conflict of Interest Policy

If the board of directors has reason to believe that an interested party has failed to disclose an actual or potential conflict of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the interested party and making such further investigation as may be warranted in the circumstances, the board determines that the interested party has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

This policy is not intended to apply to a certain nonprofit or offer legal advice specific to your organization. Such legal advice or opinions can only be rendered when related to distinct fact situations. Rather, this policy is designed to be used as a resource to provide you with ideas, suggestions, and guidelines, which may be valuable to your organization as a starting point for your own policy.

Carefully review every word in the policies you are interested in adopting and mold the language to your situation and organizational needs. Finally, before publishing a policy, it is always wise to consult an attorney in your state who is versed in nonprofit law to conduct a thorough review of the policy.

MODEL CONFLICT OF INTEREST POLICY
ANNUAL AFFIRMATION OF COMPLIANCE AND DISCLOSURE STATEMENT

I have received and carefully read the Conflict of Interest Policy for board members, staff and volunteers of ABC Nonprofit, Inc. and have considered not only the literal expression of the policy, but also its intent. By signing this affirmation of compliance, I hereby affirm that I understand and agree to comply with the Conflict of Interest Policy. I further understand that ABC Nonprofit Inc. is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Except as otherwise indicated in the Disclosure Statement and attachments, if any, below, I hereby state that I do not, to the best of my knowledge, have any conflict of interest that may be seen as competing with the interests of ABC Nonprofit Inc., nor does any relative or business associate have such an actual or potential conflict of interest.

If any situation should arise in the future which I think may involve me in a conflict of interest, I will promptly and fully disclose the circumstances to the President (Chairman) of the Board of Directors of ABC Nonprofit, Inc or to the Chief Executive Officer, as applicable.

I further certify that the information set forth in the Disclosure Statement and attachments, if any, is true and correct to the best of my knowledge, information and belief.

Name (Please print)

Signature

Date

DISCLOSURE STATEMENT

Please complete the questionnaire, below, indicating any actual or potential conflicts of interest. If you answer “yes” to any of the questions, please provide a written description of the details of the specific action or transaction in the space allowed. Attach additional sheets as needed.

Financial Interests - A conflict may exist where an interested party, or a relative or business associate of an interested party, directly or indirectly benefits or profits as a result of a decision made or transaction entered into by the organization.

Please indicate, during the past 12 months:

Has the organization contracted to purchase or lease goods, services, or property from or otherwise had a direct business relationship with you, or from any of your relatives or business associates? ☐ Yes ☐ No

If yes, please describe:

Has the organization purchased an ownership interest in or invested in a business entity owned by you, or owned by any of your relatives or business associates? ☐ Yes ☐ No

If yes, please describe:

Has the organization offered employment to you, or to any of your relatives or business associates, other than a person who was already employed by the organization? ☐ Yes ☐ No

If yes, please describe:

Have you, or have any of your relatives or business associates, been provided with a gift, gratuity or favor, of a substantial nature, from a person or entity which does business, or seeks to do business, with the organization? ☐ Yes ☐ No

If yes, please describe:

Have you, or any of your relatives or business associates, been gratuitously provided use of the facilities, property, or services of the organization or received a grant, loan or other financial assistance from the organization? ☐ Yes ☐ No

If yes, please describe:

Has a relative had a direct or indirect business relationship with the organization?

☐ Yes

☐ No

If yes, please describe:

Have you served as an officer, director, trustee, key employee, partner or member/shareholder of an entity doing business with the organization?

☐ Yes

☐ No

If yes, please describe:

-[add additional examples, if any]

Other Interests - A conflict may also exist where an interested party, or a relative or business associate of an interested party, obtains a non-financial benefit or advantage that he/she would not have obtained absent his/her relationship with the organization, or where his/her duty or responsibility owed to the organization conflicts with a duty or responsibility owed to some other organization.

Please respond to the following questions indicating if you had this activity anytime during the past twelve months:

Did you obtain preferential treatment by the organization for yourself, or for any of your relatives or business associates?

☐ Yes

☐ No

If yes, please describe:

Did you make use of confidential information obtained from the organization for your own benefit, or for the benefit of a relative, business associate, or other organization?

☐ Yes

☐ No

If yes, please describe:

Did you take advantage of an opportunity, or enable a relative, business associate or other organization to take advantage of an opportunity, which you had reason to believe would be of interest to the organization?

☐ Yes

☐ No

If yes, please describe:

-[add additional examples if any]

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READY REFERENCE PAGE

NO. 39
FOR YOUR FILE

Conflict of Interest Policies Help Avoid Problems

In addition to protecting against embarrassment and loss of contributions, policies can provide protection against possible excess benefits tax violations

For charities dependent upon public contributions for their success, a conflict of interest scandal can be devastating. It can erode public confidence in their organization and jeopardize the entire program.

It can also be expensive for the individuals involved under the excess benefits tax rules. The IRS can impose a tax on any “disqualified person,” including any officer, director or other person in a position to exercise substantial influence over the affairs of the organization in the last five years who receives more from the organization than is provided in return. ([See Ready Reference Page: “Charities Must Avoid Excess Benefit Transactions”](#))

State law may be fairly relaxed on conflicts, in some cases providing that a transaction is not voidable if the conflict relationship is disclosed to the board (or members if the corporation has voting members) and the transaction is approved by an independent majority of the board or membership (even if not fair), or if the transaction is fair to the corporation when entered into. If the relationship is not disclosed, however, the fairness test will generally be looked at after the fact, when the deal has gone sour.

Charities and other nonprofits can clearly benefit from a stated Conflict of Interest Policy, tailored to their own situation and followed by all. Although most policies cover financial conflicts of interest, boards should realize that it is also possible for directors to have positional conflicts on matters of policy that may not be fully covered by a policy limited to financial interests.

Although some organizations include conflicts provisions in their bylaws, more deal with the issue in a Resolution. The Internal Revenue Service has published a suggested conflicts policy, primarily for health care organizations, which was slightly revised and published in its Continuing Professional Education Manual for 2000.

A somewhat different policy, with a few comments in italics, is set out below. Additional language for grantmaking organizations is included in [brackets].

* * * * *

CONFLICT OF INTEREST POLICY

WHEREAS, the Board of Directors of _____ (the “Organization”) has consistently followed a policy of avoiding a conflict of interest or the appearance of such conflict on the part of the members of the Board and staff; and

WHEREAS, the policy of the Board has been to include representatives of clients of the Organization as well as others on the Board; (This provision obviously may not be applicable in all situations.) and

WHEREAS, it is desirable that the policy to avoid conflicts of interest be clarified and spelled out in a Resolution of the Board; NOW, THEREFORE, BE IT RESOLVED, that this Board hereby adopts the following policy with respect to possible conflicts of interest among the members of the Board and the staff of the Organization:

Service on the Board of the Organization is purely voluntary and shall not be used as a means for private benefit or inurement. *(This provides the basis for removal of anyone who uses his or her position for private gain, including a diversion of corporate opportunity. It also provides a basis to object to a member exercising authority in a situation involving a positional conflict.)*

No member of the Board who is a vendor of goods or services to the Organization or is affiliated (as defined below) with any vendor of goods or services to the Organization shall vote on, or participate on behalf of the Organization in the administration of, any contract with such vendor. *(This assures that no one will act personally in a conflict situation.)*

No member of the Board who is a recipient of [grants,] goods or services from the Organization or is affiliated (as defined below) with a recipient of [grants,] goods or services from the Organization shall vote on, or participate on behalf of the Organization in the administration of, any contract or other arrangement with such recipient.

Such member shall, upon request of any member of the Board, leave any meeting for the period of time the Board (of any committee thereof) is discussing any arrangement with which he or she has an affiliation. *(State law may permit a board member to remain in the meeting while his or her transaction is being discussed, a “chilling” situation for discussion by the other board members. This requires them to leave if anyone so requests. It does not prevent the member from discussing the issue while in the room, which can often help to clarify the situation for those in doubt.)*

No individual or entity with which a member of the Board or staff is affiliated shall receive any special consideration by the Board or staff. There shall be no variation in the procedures for processing [grants to or] contracts with such affiliated entities or individuals, except that additional scrutiny may be applied to such consideration, and the Organization shall follow such procedures as are necessary or appropriate to assure that the transaction does not constitute an “excess benefit transaction” under the Internal Revenue Code. *(It is worth a specific reminder of the excess benefits rules and the necessity for independent review and approval after comparison with comparable situations.)*

No member of the staff of the Organization shall, without previous approval of the President, be, or be affiliated with, either a vendor to, or recipient of [grants,] goods or services from, the Organization.

A person shall be deemed to be affiliated with an entity if the person

- (a) serves as a member of a governing body of the entity,
- (b) serves as an officer or employee of the entity,
- (c) has a material economic relationship with the entity, *(Materiality is obviously a question of degree. Ownership of 100 shares of AT&T stock should not prevent the member from being involved in selecting the telephone provider, but having a spouse own the janitorial company*

seeking the organization's business would be material.) or

(d) if the person's spouse, parent, sibling, child, or member of the immediate household, holds such a position or has such a relationship. *(The inclusion of members of the immediate household is intended to cover a "significant other" living with the board member. Although such person has no legal relationship, the newspaper will point out the conflict.)*

A person shall be deemed to be affiliated with an individual if such individual is a spouse, parent, sibling, child, or member of the immediate household of such individual or has a material economic relationship with such individual.

Where a member of the Board or staff is unsure whether a conflict or an affiliation exists, he or she shall disclose the relevant facts to the President, or to the Board, and shall abide by the decision of the President or the Board as to the existence of a conflict or an affiliation.

A member of the Board shall advise the President of affiliation with any existing or proposed vendor or recipient of [grants,] goods or services in response to an annual questionnaire and at any other time when such member of the Board becomes aware of an affiliation which has not previously been disclosed. *(This requires both the annual certification and disclosure when a new conflict arises so that the Board will be able to act appropriately in every instance.)*

Nothing in this policy shall prevent a member of the Board who is or is affiliated with a recipient of [grants,] goods or services from the Organization from participating in discussions or decisions relating to the scope or quality of [grants,] goods or services provided generally to such recipient and other clients similarly situated. *(The policy is not intended to disenfranchise a board member, particularly a client representative, from debating general issues applicable to all persons similarly situated.)*

Attached to Conflict of Interest Policy:

Compliance with Pennsylvania Charitable Solicitation Registration Law

In addition, to satisfy the requirements of the Pennsylvania Solicitation of Charitable Funds Act, a member of the Board or staff shall advise the President in response to an annual questionnaire and at any other time when such person becomes aware of such relationship which has not previously been disclosed, if such person is related by blood, marriage or adoption to any other member of the Board of Directors, or to any officer, or employee of the Corporation or to any officer, agent or employee of any professional fund raising counsel or professional solicitor under contract with the Corporation, or to any supplier or vendor providing goods or services to the Corporation, and the names and business and residence addresses of any such related party.

Page Break

CONFLICT OF INTEREST DISCLOSURE STATEMENT

I have read and familiarized myself with the Corporation's Conflict of Interest Policy. I certify that I am not, and have no affiliation with, an existing or anticipated vendor to, or recipient of grants, goods or services from, the Corporation and have no information to report with respect to the Pennsylvania Solicitation of Charitable Funds Act, except:

(Please write "None" if you have no information to disclose)

Signature

Name

Position

Date

DOCUMENT RETENTION AND DESTRUCTION¹

The purpose of this policy is to: 1) provide a system for complying with document retention laws, 2) ensure that the organization retains valuable documents, 3) save money, time and space, 4) protect the organization against allegations of selective document destruction, and, 5) provide for routine destruction of non-business, superfluous, and outdated documents.

Documents that should be retained and the period of retention are listed below. In general, documents that are not subject to a retention requirement should be kept only long enough to accomplish the task for which they were generated.

The **(Name of Position)** is in charge of making sure that the appropriate department head or manger is complying with document retention schedule. On **January 15th** of each year **(or six months after the end of the fiscal year, or at the start of each fiscal year)** each responsible department head or manger will submit to **(Name of Position)** a list of the documents that have been sent to storage or destroyed. The list will identify the documents with enough specificity that one outside the department could determine which documents were stored or destroyed. Lists of documents stored or destroyed will be kept by **(Name of Position)**.

Our organization has a legal duty to retain relevant documents which it knows or believes may be relevant to any legal action. Such documents also include those that could lead to discovery of admissible evidence. Accordingly, all document destruction is automatically suspended when a lawsuit, claim, or government investigation is pending, threatened or reasonably foreseeable. In such a case, paper document destruction, as well as electronic destruction must cease immediately. In the case of electronic destruction, the system administrator is responsible for ensuring that any automatic destruction program is disabled and reviewing all electronic systems that contain documents potentially relevant to the litigation or claim.

All documents, including electronic documents, that are no longer relevant to the organization's business, should be destroyed every 60 days. Do not retain drafts of any documents that have been finalized. Personal notes should not be kept after they are no longer needed.

In accordance with the **Nonprofit Organization's** policy, the following documents must be retained or destroyed as set forth in the schedule below. Please review the schedule and any applicable documents in your possession on an annual basis to ensure compliance with this schedule. Your supervisor will direct the deposit or filing of all documents that must be retained, as well as the destruction of documents that must be purged.

After the retention period has run, you should give deliberate consideration to the type of information retained, and further consider methods of destruction of that data so that when it is appropriate to dispose of the data or documents, the correct method may be employed. For example, when highly sensitive information is maintained, a more secure

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destruction method may be appropriate, and your document destruction policy may outline those options. In the case of highly sensitive information, the nonprofit may use any of the following methods to ensure destruction, and safeguard privacy by ensuring that data cannot be recovered:

Hard Drives – typically found in DVRs, NVRs and PCs: [Digital Video Recorders, Network Video Recorders, Personal Computers]

- Remove hard drive from equipment
- Puncture case completely piercing disk platter in at least two (2) places
- Recycle destroyed drive as scrap metal

Magnetic Recording Tape Cassettes – typically found in VHS or VCR recorders: [Video Home System, Video Cassette Recorder]

- Remove tape cassette from equipment
- De-gauss magnetic media
- Crush tape cassette
- Recycle destroyed tape and cassette as scrap plastic

Paper-based documentation – typically obsolete site plans, correspondence, reports:

- Remove document from active file
- Cross-shred document
- Recycle shredded waste as scrap paper.

There may be occasions where less extreme measures are adequate, and a simple document shredding or hard drive reformatting are appropriate. But it is advisable to consider the options in advance, so that a plan is in place for proper destruction when the time comes.

NOTE: *Neither this policy nor the accompanying schedule sets forth the means of storing documents during the retention period. You must consider how best to accomplish this task for your organization, e.g. consider whether to store information on paper, microfilm, some type of electronic format, etc. and whether to store on-site or off-site.*

Thanks to Jack Owen, Esq of Owen & Conley, LLC, Pittsburgh for reviewing this document for compliance with Pennsylvania State laws.

A quick guide to abbreviations:

- ADA – American’s With Disabilities Act
- ADEA - Age Discrimination in Employment Act
- DLLR - Department of Labor, Licensing, and Regulation
- EEO – Equal Employment Opportunity
- ERISA – Employee Retirement Income Security Act
- FICA - Federal Insurance Contributions Act
- FLSA – Fair Labor Standards Act
- FMLA – Family Medical Leave Act
- FUTA - Federal Unemployment Tax Act
- OFCCP - Office of Federal Contract Compliance Programs
- OSHA – Occupational Safety Health Administration
- PHRA – Pennsylvania Human Relations Act

FINANCIAL DOCUMENTS

MINIMUM RETENTION REQUIREMENT

NOTE: How long should you keep the documents listed below? In the nonprofit world, the answer is less clear than in the for-profit sector, as most of the document retention statutes are directed at profit-making corporations or those that issue securities. As a general rule, you should keep the documents listed below until the statute of limitations has expired on the item of income or deduction for that particular return. For most purposes, the minimum limitations period is three years after the date the return is due or filed, whichever is later, as that is when the limitations period generally runs for an IRS audit. However, in light of the Sarbanes-Oxley Act that requires auditors to keep audit records for 7 years following a final audit report, it may be prudent to keep most financial documents for 7 years. Remember, many of the same records listed below will also be used to monitor programs and prepare statements for funders. Accordingly, you should check your grant applications, awards and contracts to determine if reporting requirements and subsequent document retention periods are set forth in those documents.

Accounts Payable Ledgers and Schedules

5 years

Audit Reports

7 years (many organizations keep these records permanently).

Bank Reconciliations and Statements

7 years and/or until all federal and state audit requirements have been met. **[same as tax]**

Checks (for important payments and purchases)

5 years or 4 years after item purchased is no longer owned.

Correspondence – customers/vendors

Depends on issue in correspondence and whether there is a contract; if potential litigation-3 years until threat of litigation has passed; if contract claim is possible, 4 years or until potential claim has dissipated.

Depreciation Schedules

While active + 7 years

Expenses and Purchases - Documentation can include: cash register tapes, account statements, canceled checks, invoices, credit card sales slips. Separate deductible expenses in the event organization pays unrelated business income tax.

5 years

Gross Receipts-amounts received from all sources. Documents that support gross receipts include: cash register tapes, bank deposit slips, receipt books, invoices, credit card charge slips, and Form 1099-MISC

7 years

| | |
|---|--|
| Year-end financial statements | If Audit Report is generated by organization- 7 years; if no audit is conducted and year-end financial report is used in place of audit – permanently. |
| HUMAN RESOURCE DOCUMENTS | MINIMUM RETENTION REQUIREMENT |
| <p>NOTE: A former employee in Pennsylvania generally has 300 days to file an EEO claim or 180 days to file a PHRA claim. Employees under contract may have up to four years to file a claim. Other types of employment claims, for example defamation, intentional infliction of emotional distress, and wrongful discharge are subject to a two-year statute of limitations.</p> <p>If the statute governing the record specifies no time limit, then you can usually apply the Uniform Preservation of Private Business Records, which specifies a three-year time limit for preserving documents. The Office of Federal Contract Compliance Programs (OFCCP) requires federal contractors to preserve most employment records for 2 years.</p> <p>To make things easier for the document retainers, you may want to adopt a uniform guideline that will work for almost all employment documents, such as four years, with exceptions for longer periods of time.</p> | |
| Affirmative Action Plan and Related Information | 1 year from date of Plan Year-Federal law. State or other government contracts may require a longer period (5 years in some cases). |
| Age Discrimination in Employment Act | Records relating to discrimination charges-Until final disposition of the charge. |
| <i>Applications for Employment and Résumés-For those who were not hired</i> | OFCCP large contractor and schools-2 years;Age Discrimination in Employment Act (ADEA), Title VII and ADA-1 year from date of submission; driving records are regarded as hiring records and should be kept for same period of time. |
| Unsolicited Applications for Employment | Answer is unclear; recommend two years as above; online submissions of resumes may be discounted but no definitive ruling in this area. |
| EEO Claims | While active, plus three years. |
| EEO Reports | As long as current. If an OFCCP contractor-1 year. If OFCCP contractor with more than 150 employees or \$150,000 in contracts, then must keep for 2 years. |
| Employee Benefit Plans | Records relating to ADEA-1 year after termination of plan. Records relating to payment of premiums while on FMLA leave 3 years after final payment was made for premiums. Records relating to data mentioned in the Summary Plan Description-6 |

| | |
|--|--|
| ERISA Records relating to Welfare and Pension Benefits | years after data and description were published to employees. 6 years. |
| Employment Tax Records and Returns | 4 years after the date the tax becomes due or is paid. |
| Employment Documents Relevant to Discrimination or other Statutory Claims | Title VII-The Act itself only requires the employer to keep records until final disposition of the charge; recommend that records be kept at least 1 year after charge is resolved. |
| Employment Turn-downs (Rejection Letters) | Two years after letter is sent. |
| FMLA Leave Documents | 3 years after end of leave period. |
| I-9s | 3 years from date of hire or 1 year after termination, whichever is later. Many experts recommend keeping these forms separate from the employee's personnel file, but such action is not required by law. |
| Interview Information and Reference Checking Notes | 1 year after job is filled under ADA, ADEA, and Title VII; References-2 years after record is made. |
| Job Advertisements and Job Requests Made to Agencies | 1 year after placement of advertisement or request for an employee-ADEA. |
| Job Descriptions | 2 years after record is made under Equal Pay Act. |
| OSHA Logs | 5 years for OSHA Form 200, 300 and 301 and OSHA 101; legally required medical exams and toxic exposure records for duration of the individual's employment, plus 30 years. |
| Personal Medical Information Make sure that no medically related information is in an employee's personnel file; all such information should be kept in a separate file. | 1 year after termination; OSHA Records-See above. Medical Certifications: 3 years after certification is obtained. Medical information includes all medical records, physical examinations, workers comp claims, drug and alcohol testing, medical forms requesting health information for insurance purposes. |
| Payroll Records and Summaries | 3 years from the last date of entry. 4 years for FICA-related information. 4 years for FUTA-related information. |

| HUMAN RESOURCE DOCUMENTS | MINIMUM RETENTION REQUIREMENT |
|---|---|
| Personnel Files (terminated employees)- Should include employment application, discipline reports, evaluations, salary history, etc. | 7 years, though experts differ on the time period for these records as there is no specific law regulating retention periods for most of the documents kept in personnel files; some recommend as few as 4 years after employee terminates; ADEA, ADA, FLSA and FMLA require 3 years for basic employment info. |
| Policies, Guidelines and Employee Handbooks | For as long as they are current and at least 3 years after they are outdated. |
| Recruiting Information- Advertisements, Job Postings, interview information, Applications for Employment when not hired. | 1 year after record is made. |
| Retirement and Pension Record | During the time the Plan is active plus 6 years after discontinuance of the Plan. Other experts recommend keeping such documents permanently. |
| Timesheets | 3 years from last date of entry. Other experts recommend keeping for 7 years. |
| Unemployment Insurance Documents- Quarterly Contribution Report and Employment Report | 4 years after tax is paid (Pennsylvania law). |
| MISCELLANEOUS DOCUMENTS | MINIMUM RETENTION REQUIREMENT |
| Contracts | 4 years after contract term has expired. |
| Correspondence – general | 3 years. |
| Correspondence – legal/important | Keep with legal issue file whether lawsuit, insurance claim, etc. then retain according to that retention requirement. |
| Grant applications and Awards | Life of grant, plus 3 years after expiration of grant; grant itself may have separate record-keeping requirements that organization must adhere to. |

| MISCELLANEOUS DOCUMENTS | MINIMUM RETENTION REQUIREMENT |
|--|---|
| Grant and Contract Reports | Life of grant or contract, plus 3 years after expiration of grant or contract; review grant or contract for any separate record-keeping requirements. |
| Insurance Records, Accident Reports, Claims | Workers Compensation Claims-10 years after close of matter. Long-term Disability-10 years after return to work, retirement or death. |
| Insurance Policies (expired) | 3 years if a Claims-Made policy; permanently, if it is an Occurrence policy. |
| Internal Audit Reports | Generally retain most recent 5 years or until resolved + 5 years. |
| Inventories of Products, Materials, Supplies | Generally the most recent two inventories and/or until all audit requirements have been met. |
| Leases | Seven years |
| DOCUMENTS THAT SHOULD BE KEPT PERMANENTLY | |
| Minute Books | |
| Charter (Articles of Incorporation) | |
| Bylaws and all Amendments | |
| Form 990 and any Schedules filed with the form, Form 990-T Exempt Organization Income Tax Form (if your organization files such a form) Note: this document is subject to the public disclosure regulations for up to 3 years after the due date or the filing date of the return. | |
| IRS Determination Letter Granting Organization 501(c) Status. Note: this document is subject to the public disclosure regulations. To obtain a copy of this letter contact the IRS at 877-829-5500. | |
| 1023 Application for Tax-Exempt Status , all Supporting Documents submitted with the form, and all documents that the IRS requires the organization to submit. Note: these documents are subject to the public disclosure regulations if the organization received status after July 15, 1987. If your organization does not have a copy of the approved 1023 form, you can request a copy by going to http://www.irs.gov/pub/irs-pdf/f4506a.pdf | |
| Trademark Registrations and Copyrights- Life of trademark – there is no legal retention requirement but should keep for the lifetime of the trademark plus applicable statute of limitations (6 years). | |
| Patents, Related Papers. Life of patent + 6 years. | |
| Deeds, Mortgages and Notes | |
| Sales Tax and Real Estate Tax Exemption documents | |

INTRODUCTION

_____ (the “Foundation”) adopts the attached Record Retention Policy which policy is consistent with the Foundation’s commitment to its mission. Implementing a Record Retention Policy assists the Foundation to: meet legal standards for retention, storage and retrieval; optimize the use of limited space; minimize the costs of record retention; provide for consistency in the retention and destruction of records.

All Foundation employees shall comply with the standards set forth in this policy. The failure to do so may result in disciplinary action, including termination.

This policy provides a general guide for employees in performing their record retention responsibilities. It cannot address every issue that may arise.

Retention periods may increase by government regulations, judicial or administrative consent order, change in best practice standards, private or government contract, audit requirements, or pending litigation, investigation or other actions. The Foundation’s policy regarding “legal holds” is discussed below. If there are inconsistencies in the required retention periods, follow the longer retention period.

I. Definitions.

A. **Record.** For the purpose of this policy, a “record” is defined as information, regardless of medium or format, which has operational, institutional or legal value to the Foundation. Collectively the term is used to describe both documents and electronically stored information.

B. **Retention Period.** “Retention Period” is the amount of time a record shall be maintained. A Retention Period is measured from the last date that an item occurred or was in effect. For instance, a contract will be kept for seven years after the date the contract terminated or expired, as opposed to the date the contract began. Records which relate to minors must be kept until the minor attains majority and then for the applicable Retention Period.

C. **Essential and Non-essential E-mails.** Essential e-mails are e-mails which contain, in whole or in part, content which is otherwise subject to the Record Retention Policy and/or which is essential to the Foundation. Such e-mails should be saved to a computer hard-drive or printed in hard copy, but remain subject to the retention guidelines set forth in the attached Policy. Non-essential emails are e-mails which have no content subject to the Record Retention Policy and/or which have no content essential to the Foundation. Questions or concerns about the appropriate treatment of any e-mail document may be directed to the _____ [Title].

II. **Record Retention Practices.** In general, employees should maintain records only as long as necessary to comply with regulatory and legal requirements and the Foundation’s business needs. Once the Retention Period for the record set forth in this policy has passed, the employee should destroy the records in accordance with the procedures identified below.

Due to the volume of records that are created during the ordinary course of doing business, there are substantial costs and administrative burdens associated with excessive record retention. The costs of retaining unneeded records include waste of file and storage space, additional expense incurred from outside records storage services, and unnecessary burdens on the Foundation's electronic information systems.

The length of time that a record must be maintained will depend upon the type of information contained in the record, statutory or regulatory requirements for its maintenance and applicable statutes of limitations. Not all documents will have a "legally" required period of retention. Where there is no legally required period of retention, the Foundation has assigned a reasonable time period. The form in which the record exists (documentary or an electronic form) will not determine the Retention Period.

III. Retention Schedule. Exhibit A, attached to this policy, is a schedule that provides the standards that all employees must follow in managing the Foundation's records. Only the most common types of documents are listed in this schedule.

IV. Record Storage Service. The Foundation uses the services of _____ for external document storage. Records that are not currently being utilized or are not required by law to remain "on-site" should be appropriately labeled and boxed for storage off site. The labels should sufficiently identify the content of the records, the department, the dates of the records, and the date they should be destroyed in accordance with the schedule set forth in Exhibit A.

V. Electronic Communications. This policy extends to electronic communications, which shall include all communications and information transmitted, received or contained in the Foundation's business equipment or information systems, including email, facsimile transmissions and voice mail.

VI. Email Communications. Email communications are a form of record and covered by this policy. Junk emails should be deleted immediately and removed from the network server. Non-essential emails should be deleted within thirty (30) days of receipt. Emails containing information subject to the Retention Schedule should be saved to a computer hard-drive or printed in hard copy.

VII. Legal Holds. There are occasions in which records, including electronic communications, that are otherwise scheduled for destruction must be retained due to a "legal hold." A valid "legal hold" is issued only by the _____ [Title] and suspends the destruction of records due to pending, threatened or otherwise reasonably foreseeable litigation, audits, government investigations or similar proceedings. No records specified in any Legal Hold may be destroyed, even if the scheduled destruction date has passed, until the hold is withdrawn in writing by the _____ [Title] or _____ [Title]. A sample Legal Hold is attached as Exhibit B to this policy.

Once any employee learns of the institution of a legal proceeding or threatened legal proceeding (including any audit, subpoena, or government investigation) against the Foundation or its personnel, prompt notification should be given to the _____ [Title].

Notice of a Legal Hold, which will identify the relevant documents covered by the notice, will be provided by the Foundation to all appropriate personnel. All employees must follow the instructions set forth in the Legal Hold notice.

The Foundation takes very seriously its obligations to preserve information relating to litigation, audits, and investigations. It is a federal offense to destroy, alter or mutilate any record under federal investigation. The consequences of failing to retain items subject to a Legal Hold can be serious, including possible criminal and civil sanctions against the Foundation and its employees, and possible disciplinary action against responsible individuals (up to and including termination of employment).

VIII. Violations of Policy. Any actual or suspected violations of the Foundation's Record Retention Policy should be reported to the _____ [Title].

If you have any questions about compliance with or implementation of this Record Retention Policy, please contact the _____ [Title].

Date approved by the Board of the Foundation: _____, 20____.

EXHIBIT A

Retention Schedule

| Category | Documents | Retention Period |
|--------------------------|---|--|
| Contracts | <ul style="list-style-type: none"> ▪ Construction Contracts ▪ Loan documents ▪ General Vendor contracts | <ul style="list-style-type: none"> ▪ Permanent ▪ Permanent if there are terms which survive payment of the loan ▪ Seven (7) years after termination/expiration of the agreement and all terms contained in the Agreement |
| Corporate Records | <ul style="list-style-type: none"> ▪ Evaluation of other organizations, businesses and general business matters Due Diligence Files ▪ Articles of Incorporation ▪ Bylaws ▪ Board-related documents (corporate charters, by-laws, minutes, corporate documents, agenda) ▪ Intellectual property (Trademarks, patents, copyrights) ▪ Closed litigation files ▪ Executed contracts with other parties ▪ Drafts of contracts ▪ Compliance documents ▪ Documents related to subpoena requests or court orders ▪ Conflict of Interest Policy, Amendments ▪ Annual Conflict of Interest Disclosure Statement (signed by all Board members and employees) ▪ Nondisclosure Statements ▪ Board self-appraisals/evaluation ▪ Policies and Procedures | <ul style="list-style-type: none"> ▪ Ten (10) years ▪ Permanent ▪ Permanent ▪ Permanent ▪ Permanent ▪ Ten (10) years ▪ Life of contract plus seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Five (5) years after disposition ▪ Permanent ▪ Seven (7) years ▪ Permanent ▪ Seven (7) years after implementation of new policy and procedure |
| Electronic Media | <ul style="list-style-type: none"> ▪ E-mail | <ul style="list-style-type: none"> ▪ Junk – Delete immediately (Department Head approval not required) ▪ Non-essential – Delete after thirty (30) days (Department Head approval not required) ▪ Essential e-mails – Save out of inbox using the file system (save to source other than the email server, such as network drive, hard media or other recoverable format) and then subject to retention schedule |

| Category | Documents | Retention Period |
|---|---|--|
| Employment-related: -- <u>Legal Requirements:</u> <ul style="list-style-type: none"> Title VII, Civil Rights Act of 1964 and the Americans with Disabilities Act | <ul style="list-style-type: none"> Any personnel or employment records, including: <ul style="list-style-type: none"> application forms and records concerning hiring, promotion, demotion, transfer, layoff and rates of pay; requests for reasonable accommodations. Records concerning charges of bias or discrimination EEO-1 Forms Records on the effect of hiring procedures on women and minorities | <ul style="list-style-type: none"> Three (3) years from date of record creation or personnel action (whichever is later) Until final resolution of matter Copy of most recently filed report must be maintained Three (3) years |
| <ul style="list-style-type: none"> Age Discrimination in Employment Act Fair Labor Standards Act | <ul style="list-style-type: none"> Employee payroll records (including weekly compensation) and rate of pay Employment or personnel records relating to applications, resumes, promotions/demotions, layoffs Employee benefit plans Basic records relating to employee compensation, including: <ul style="list-style-type: none"> payroll records; individual employment contracts; certificates and notices of Wage and Hour administrator; sales and purchase records Supplementary basic records including: <ul style="list-style-type: none"> work schedules; basic employment and earnings records; wage rate tables; records of additions or deductions from wages paid; order, shipping and billing records; records of changes in compensation rates; documentation for basis of any wage differences to employees of opposite sex. Certificates of Age | <ul style="list-style-type: none"> Three (3) years Three (3) years from date of personnel action to which record relates One (1) year after termination of plan Three (3) years Three (3) years Termination of employment |

| Category | Documents | Retention Period |
|--|---|---|
| Employment-related (cont.): | | |
| <ul style="list-style-type: none"> ▪ Executive Order No. 11246 (for federal contractors/subcontractors) | <ul style="list-style-type: none"> ▪ Affirmative action programs and supporting documentation, including job files | <ul style="list-style-type: none"> ▪ Two (2) years from the date record was made or personnel action occurred, whichever is later ▪ Current and prior year's AAP must be maintained on site |
| <ul style="list-style-type: none"> ▪ Immigration Reform and Control Act | <ul style="list-style-type: none"> ▪ INS Form I-9 | <ul style="list-style-type: none"> ▪ Three (3) years after date of hiring or one year after employee's termination, whichever is later |
| <ul style="list-style-type: none"> ▪ Employment Policies | <ul style="list-style-type: none"> ▪ Records concerning the adoption of policies and procedures ▪ Personnel files ▪ Records concerning employment claims | <ul style="list-style-type: none"> ▪ Seven (7) years ▪ Five (5) years following termination of employment ▪ Until resolution of claim |
| <ul style="list-style-type: none"> ▪ Benefits | <ul style="list-style-type: none"> ▪ Plan documents, summary plan descriptions and related documents ▪ Provider contracts, records concerning plan administrators and related and similar records ▪ Records concerning pension or 401(k) eligibility ▪ Records concerning health and welfare plan eligibility | <ul style="list-style-type: none"> ▪ Permanent ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years |
| <ul style="list-style-type: none"> ▪ Payroll | <ul style="list-style-type: none"> ▪ All payroll-related documents | <ul style="list-style-type: none"> ▪ Seven (7) years |

| Category | Documents | Retention Period |
|---|--|---|
| Financial <ul style="list-style-type: none"> ▪ Sarbanes Oxley Compliance ▪ Tax | <ul style="list-style-type: none"> ▪ Audit records of Public Accountants (including audit, audit management letter, annual report and audit workbook of supporting schedules) ▪ General ledgers ▪ Year-end financial statements ▪ Accounts payable ledgers and schedules ▪ Account receivable ledgers and schedules ▪ Expense reports ▪ Invoices ▪ Purchase Orders ▪ Bank statements, deposit forms, supporting documentation ▪ Correspondence ▪ Canceled checks ▪ Asset purchase records for depreciable property ▪ Charts of accounts ▪ Year-end Financial Statements ▪ Depreciation Schedules ▪ Federal income tax returns ▪ Supporting data (work papers, sales and use tax reports) ▪ State and local income, sales and use ▪ Property tax exemption documents ▪ Original Form 1023 application | <ul style="list-style-type: none"> ▪ Permanent ▪ Permanent ▪ Permanent ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Four (4) years ▪ Retention period may vary depending on subject matter ▪ Seven (7) years/Permanent for major payments/purchases ▪ Depreciable "life" of the property plus seven (7) years ▪ Permanent ▪ Permanent ▪ Permanent ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Permanent ▪ Permanent |
| General Communications | <ul style="list-style-type: none"> ▪ Annual reports ▪ Photos ▪ Press clippings/releases ▪ Research reports/surveys ▪ Other publications | <ul style="list-style-type: none"> ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years |

| Category | Documents | Retention Period |
|-------------------------------|---|--|
| Grantmaking | <ul style="list-style-type: none"> ▪ Grantee files ▪ Due Diligence Files ▪ Approved grants – all documentation supporting grant payment, including applications, recommendation, due diligence, grant agreement letters, and grant transmittal letters ▪ Approved grants – post-grant reporting information, outcome analysis ▪ Records from committees, including minutes, if any and lists of grants recommended for approval ▪ Scholarship grant records, including application, if the Foundation participates in selection decisions ▪ Declined and/or withdrawn grant applications | <ul style="list-style-type: none"> ▪ Seven (7) years ▪ Seven (7) years ▪ Seven (7) years after completion of funded program, or date of grant if general operating support ▪ Permanent ▪ Seven (7) years ▪ Seven (7) years ▪ Three (3) years |
| Investment-related | <ul style="list-style-type: none"> ▪ Performance reports ▪ Fund-specific documents ▪ Manager performance ▪ Manager contracts ▪ Consultant reports ▪ Consultant contracts | <ul style="list-style-type: none"> ▪ Ten (10) years ▪ Seven (7) years after the termination of the fund ▪ Seven (7) years ▪ Seven (7) years after the completion of all obligations under contracts ▪ Seven (7) years ▪ Seven (7) years |
| Philanthropic Services | <ul style="list-style-type: none"> ▪ Fund agreement/related files, correspondence ▪ Gift acknowledgement ▪ Gift solicitations ▪ Trust Agreements & file ▪ Supporting organizations fund files ▪ Donor-advised fund files | <ul style="list-style-type: none"> ▪ Permanent ▪ Seven (7) years ▪ Seven (7) years after final distribution of funds received in response to solicitations ▪ Seven (7) years after termination of trust ▪ Seven (7) years after termination of trust ▪ Seven (7) years after termination of the fund |
| President's Office | <ul style="list-style-type: none"> ▪ Various documents identified by President not otherwise subject to retention schedule | <ul style="list-style-type: none"> ▪ Two (2) years |

| Category | Documents | Retention Period |
|------------------------|---|--|
| Real Estate | <ul style="list-style-type: none"> ▪ Leases ▪ Deeds, mortgages, notes, security agreements for real estate held for sale, satisfactions, releases of mortgage | <ul style="list-style-type: none"> ▪ Ten (10) years ▪ Permanent (in donor file if applicable) |
| Regulatory | <ul style="list-style-type: none"> ▪ Charitable registrations (as applicable in each state) ▪ IRS exemption determination, 1023 application, related correspondence ▪ Tax returns ▪ OSHA | <ul style="list-style-type: none"> ▪ Seven (7) years ▪ Permanent ▪ Permanent ▪ Depends on the type of record |
| Risk Management | <ul style="list-style-type: none"> ▪ All insurance - related information (including policies, underwriting information, outside broker information) ▪ Claim Files ▪ Accident Reports ▪ OSHA – employee medical records <ul style="list-style-type: none"> -- logs, summaries of occupational injuries/illnesses | <ul style="list-style-type: none"> ▪ Permanent ▪ The later of seven (7) years or life of the claim ▪ Seven (7) years ▪ Thirty (30) years ▪ Five (5) years |
| Technology | <ul style="list-style-type: none"> ▪ Software including licenses, support contracts | <ul style="list-style-type: none"> ▪ Seven (7) years after the completion of all obligations under contracts |

EXHIBIT B

NOTICE OF LEGAL HOLD

To: All Employees having access to relevant records or information

From: Foundation President

Date: _____

Effective immediately, all destruction of the records described in the attached Document Preservation Notice (including all originals, copies and electronic forms) in accordance with the Foundation Record Retention Policy **must be suspended** until further notice from the office of the President.

By signing this form, the undersigned acknowledges receiving this Notice and agrees to maintain all relevant records, and further acknowledges that the failure to abide by this Notice may result in disciplinary action, including termination.

All questions regarding this Notice should be directed to the office of the President.

Description of Records:

Signature: _____

Printed Name: _____

Date: _____

Department: _____

Pennsylvania Association of Nonprofit Organizations

Whistleblower Policy

WHISTLEBLOWER POLICY

Introduction:

The Sarbanes-Oxley Act amended the federal criminal code to create or enhance penalties for retaliating against whistleblowers while a federal investigation is underway. These changes to the criminal code apply to all business entities, possibly including nonprofit organizations, their board members and employees. Therefore, adopting policies and procedures for the protection of whistleblowers is advisable.

Policy:

The Pennsylvania Association of Nonprofit Organizations (“PANO”) is committed to facilitating open and honest communications relevant to its governance, finances, and compliance with all applicable laws and regulations. PANO requires directors, other volunteers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of the organization must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.

This whistleblower policy (“the Policy”) reflects the practices and principles of behavior that support this commitment. It is important that PANO be apprised about unlawful or improper workplace behavior including, but not limited to, any of the following conduct:

- theft;
- financial reporting which is fraudulent, intentionally misleading or negligent in any manner;
- improper or undocumented financial transactions;
- forgery or alteration of documents;
- unauthorized alteration or manipulation of computer files;
- improper destruction of records;
- improper use of PANO assets, including, but not limited to its funds, supplies, intellectual property and other assets;
- improper access and or use of confidential donor information;
- authorizing or receiving compensation for goods not received or services not performed;
- violations of PANO’s conflict-of-interest policy;
- any other improper occurrence regarding cash, financial procedures, or reporting;
- any abuse of or discrimination against a PANO employee, client, vendor or person connected with a PANO member; and
- a failure by PANO to provide reasonable accommodation for disability or religious belief.

We request the assistance of every director, other volunteer and employee who has a reasonable belief or suspicion about any improper transaction. PANO values this input and each director, volunteer and employee should feel free to raise issues of concern, in good faith, without fear of retaliation. Directors, volunteers and employees will not be disciplined, demoted, lose their jobs, or be retaliated against for asking questions or voicing concerns about conduct of this sort. While PANO has separate policies which cover harassment and employment discrimination, this Whistleblower Policy applies to these situations to encourage the reporting of such wrongful actions against PANO’s interest.

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Employees and other interested persons are encouraged to report any such improprieties without fear of retaliation or intimidation.

PANO will investigate any possible fraudulent or dishonest use or misuse of PANO's resources, or abuse, discrimination or a failure to provide reasonable accommodation, by management, staff, or volunteers. PANO will take appropriate action against anyone found to have engaged in fraudulent, dishonest, abusive or discriminatory conduct, including disciplinary action by PANO, or civil or criminal prosecution when warranted.

Therefore, all members of PANO staff, directors and other volunteers are encouraged to report possible fraudulent, abusive, discriminatory, or dishonest conduct (*i.e.*, to act as a "whistleblower"), pursuant to the procedures set forth below.

Reporting Responsibility:

Each director, volunteer, and employee of PANO has an obligation to report in accordance with this Whistleblower Policy (a) questionable or improper accounting, financial or auditing matters, and (b) violations and suspected violations of PANO's policies or any unlawful or improper workplace conduct (hereinafter collectively referred to as "Concerns").

Authority of Audit Committee:

All reported Concerns will be forwarded to the Audit Committee in accordance with the procedures set forth herein. The Audit Committee shall be responsible for investigating, and making appropriate recommendations to the Board of Directors, with respect to all reported Concerns.

No Retaliation:

This Whistleblower Policy is intended to encourage and enable directors, volunteers, and employees to raise Concerns within the Organization for investigation and appropriate action. With this goal in mind, no director, volunteer, or employee who, in good faith, reports a Concern shall be subject to retaliation or, in the case of an employee, adverse employment consequences. Moreover, a volunteer or employee who retaliates against someone who has reported a Concern in good faith is subject to discipline up to and including dismissal from the volunteer position or termination of employment.

Reporting Concerns:

Employees

Employees should first discuss their Concern with the Executive Director. In addition, if the individual is uncomfortable speaking with the Executive Director, or the Executive Director is a subject of the Concern, the individual should report his or her Concern directly to the Chair of PANO's Board of Directors or the Chair of the Audit Committee.

If the Concern was reported orally to the Executive Director, the reporting individual, with assistance from the Executive Director, shall reduce the Concern to writing. The Executive Director is required to promptly report the Concern to the Chair of the Audit Committee, which has specific responsibility

Pennsylvania Association of Nonprofit Organizations

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to investigate all Concerns. If the Executive Director, for any reason, does not promptly forward the Concern to the Audit Committee, the reporting individual should directly report the Concern to the Chair of the Audit Committee or the Chair of the Board of Directors. Contact information for the Chair of the Audit Committee and Chair of the Board of Directors may be obtained through the Executive Director or Chief Information Officer. Concerns may also be submitted anonymously. Such anonymous Concerns should be in writing and sent directly to the Chair of the Audit Committee.

Directors and Other Volunteers

Directors and other volunteers should submit Concerns in writing directly to the Chair of the Audit Committee. Contact information for the chair of the Audit Committee may be obtained from the Executive Director or Chief Information Officer.

Handling of Reported Violations

The Audit Committee shall address all reported Concerns. The Chair of the Audit Committee shall immediately notify the Audit Committee, the Chair and the Executive Director of any such report. The Chair of the Audit Committee will notify the reporter and acknowledge receipt of the Concern within five business days, if possible. It will not be possible to acknowledge receipt of anonymously submitted Concerns.

All reports will be promptly investigated by the Audit Committee, or any other appropriate Committee of the Board of Directors, and appropriate corrective action will be recommended to the Board of Directors, if warranted by the investigation. In addition, action taken must include a conclusion and/or follow-up with the reporter for resolution of the Concern.

The Audit Committee has the authority to retain outside legal counsel, accountants, private investigators, any other resource, or refer to another appropriate Committee of the Board of Directors, as deemed necessary to conduct a full and complete investigation of the allegations.

Acting in Good Faith

Anyone reporting a Concern must act in good faith and have reasonable grounds for believing the information disclosed indicates an improper accounting or auditing practice, or a violation of PANO's policies. The act of making allegations that prove to be unsubstantiated, and that prove to have been made maliciously, recklessly, or with the foreknowledge that the allegations are false, will be viewed as a serious disciplinary offense and may result in discipline, up to and including dismissal from the volunteer position or termination of employment. Such conduct may also give rise to other actions, including civil lawsuits.

Rights and Responsibilities of Employee

Whistleblower Protection

PANO will protect whistleblowers as follows:

Pennsylvania Association of Nonprofit Organizations Whistleblower Policy

- PANO will use its best efforts to protect whistleblowers against retaliation. All complaints by Whistleblowers will be handled with sensitivity, discretion and confidentiality to the extent allowed by the circumstances and the law. Generally this practice means that whistleblower concerns will only be shared with those who have a need to know in order to conduct an effective investigation. (Should disciplinary or legal action be taken against a person or persons as a result of a whistleblower complaint, such persons may also have a right to know the identity of the whistleblower.)
- A whistleblower shall not be subject to retaliation. No punishment for reporting issues will be allowed, even if the claims are unfounded; a reasonable belief or suspicion that unlawful or improper workplace behavior has occurred is enough to create a protected status for the whistleblower. No action can be taken against the whistleblower with the intent or effect of adversely affecting the terms or conditions of the whistleblower's employment, including but not limited to threats of physical harm, loss of job, punitive work assignments, or impact on salary or wages. Whistleblowers who believe that they have been retaliated against may file a written complaint with the Audit Committee Chair. Any complaint of retaliation will be promptly investigated and appropriate corrective measures taken if allegations of retaliation are substantiated. This protection from retaliation does not prohibit managers or supervisors from taking action, including disciplinary action, in the usual scope of their duties and based on valid performance-related factors.
- Whistleblowers must be cautious to avoid baseless allegations, which are allegations made with reckless disregard for their truth or falsity. People making such allegations may be subject to disciplinary action by PANO, and /or legal claims by individuals accused of such conduct.

Posting and Notification

This policy is to be posted in PANO's offices, including in the Employee Manual, posted on PANO's website, and communicated to all new staff and board members as part of their orientation. In addition, each year, after the annual election of the board chair and after the chair of the Audit Committee has been selected, the Executive Director will have the responsibility of updating the contact information below for both of those individuals and then sending the policy with the updated contact information to all staff and the Board of Directors. This policy shall also be available to volunteers or PANO members upon request.

Pennsylvania Association of Nonprofit Organizations Whistleblower Policy

CONTACT INFORMATION:

Chair of Audit Committee:

Chair of Board of Directors:

Date Approved: _____, 20XX

Date Last Amended: _____, 20XX

This Policy is a sample policy which is not intended to be adopted by all organizations. It is merely a sample, providing a starting point for the development of a Whistleblower Policy that is tailored to the needs of an individual organization. The publication of this Policy is not intended as legal advice. Nonprofit organizations should consult with their own legal counsel in development of a tailored Policy.

Principle of Ethical Conduct and Whistleblower Policy

A. General

The _____ (“Corporation”) is committed to facilitating open and honest communications relevant to its governance, finances, and compliance with all applicable laws and regulations. The Corporation’s goal is for each director, officer, employee and volunteer (individually, “Representative” and collectively, “Representatives”), whether full-time or part-time, to conduct him or herself in an honest and principled fashion, and to act in good faith with others, both within and outside of the Corporation (the “Principle of Ethical Conduct”). The Corporation expects that Representatives will comply with the letter and spirit of the Principle of Ethical Conduct.

B. Responsibility

All Representatives must adhere to the Principle of Ethical Conduct and submit a good faith report of a suspected Impropriety, in accordance with Section C.

“Impropriety” means an act or failure to act with the intention of obtaining an unauthorized benefit for any private person or entity, or any action or inaction, whether or not intentional, which is or may be a violation of any statute, regulation or Corporation policy, including the Principal of Ethical Conduct.

“Good faith” means that the Representative making the report has reasonable grounds for believing the report is true and accurate and the conduct may be an Impropriety.

Any report not made in good faith will subject the Representative to serious disciplinary action, including possible termination of employment or termination of status as an officer or member of the board.

C. Reporting Procedures

Generally, if a Representative possesses a good faith belief that another Representative has taken an action or failed to take an action that has or will result in an Impropriety, he or she must promptly report the matter to the President, subject to the following qualifications:

1. If the suspected violation involves the President or if the Representative is uncomfortable reporting the matter to the President, the Representative shall report the matter to the Treasurer.
2. If the Representative is not comfortable reporting the matter to the Treasurer, the Representative shall report the matter to any other member of the Board of Directors.

The report may be made anonymously.

D. Handling of Reported Violations

A Representative who is the recipient of, or investigating, a suspected commission of an Impropriety shall preserve the confidentiality of the Representative making the report to the greatest extent possible without impeding a full and fair investigation.

E. No Retaliation

If a Representative reports a violation of an Impropriety in good faith, he or she shall not suffer harassment, retaliation or adverse employment action, as a result. Any Representative who harasses, retaliates or takes any adverse action against the individual who reported the Impropriety in good faith shall be subject to discipline, including possible termination of employment or termination of status as an officer or member of the board. This provision shall not prohibit non-retaliatory adverse actions which are independently justified or required by circumstances unrelated to the report of an Impropriety.

Adopted: _____

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Does whistleblower policy protect whistleblower?

Columbia University published its Institutional Policy on Misconduct in Research in 2006. It provides that "all reasonable and practical efforts" will be made to protect a complainant from retaliation if the person files a good faith complaint about fabrication or falsification in research. In 2014, the University also adopted a "Non-Retaliation Policy" to prohibit retaliation against individuals who report possible ethical or compliance issues in good faith. The policy was specifically intended "to encourage" members of the community to report their concerns.

In December 2014, an assistant professor in the Neuroanesthesia Division of the University's Department of Anesthesiology, according to his complaint filed in federal court, became aware that articles authored by a senior faculty member contained inaccurate, falsified, or fabricated data. He raised his concerns with the faculty member, who made no changes. He went to the Vice-Chair for Departmental Research and others, but received no response.

Shortly thereafter, according to his complaint, his dedicated research time was reduced, while other members of the department did not face such reduction. He was assigned less important research that others were allowed to opt-out of. His complaint was ignored by others and he was passed over for a promotion. When he filed an administrative complaint, that was supposed to be investigated within 60 days, no inquiry was begun for eight months, and it was not finalized for a year. He finally sued for breach of contract and violation of the whistleblower protection policies, among other things.

The University filed a motion to dismiss. It claimed that the policies did not constitute a contract between the University and the professor. The Research Misconduct policy was available on the University's website and as an appendix to the Faculty Handbook. The website policy was linked to a disclaimer that says the Handbook is not intended to be construed as a contract between the University and the faculty member. The stand-alone policy had no such disclaimer.

The Non-Retaliation Policy did not contain any disclaimer language. The University also had a "hot line" for reporting compliance concerns that did not contain any disclaimer language.

The University, nevertheless, argued that it had no contract with the professor on the non-retaliation issues because the policies could be disclaimed by the University. Even if a contract existed, the University claimed, the professor had not adequately alleged that the Uni-

versity breached it because none of the adverse actions constitute retaliation under the terms of the policies.

The federal District Court for the Southern District of New York has denied the motion to dismiss. Citing several other New York cases, the Court said that “there are disputed issues of fact with respect to the conspicuousness and clarity” of the disclaimer language and the applicability of the policies to the adverse actions alleged. (*Joshi v. The Trustees of Columbia University*, S.D. NY, No. 17-CV-4112, 5/29/18.)

You Need to Know.... This is the type of case that gives whistleblower policies a bad name. It causes every whistleblower to question the value of a whistleblower protection policy. If the organization can merely disclaim that the policy is part of a contract between the organization and the employee, what good is it? How can Columbia expect to “encourage” members of the community to report their concerns if the University can ignore the policy whenever it wants to, or if it says it can retaliate just a little bit because a little bit is insufficient to invoke the policy even if the policy is effective?

For those who believe that whistleblower policies are important to the openness and transparency of the sector, the University’s motion to dismiss is a real set-back. The professor may ultimately win this case, but why would anyone trust what the University — or any other organization — says in its policies when it can so cavalierly disavow them when invoked?

Attachment D

Compensation Philosophy Statements

A compensation philosophy statement sets forth what an organization wants to accomplish through its compensation programs. It guides all future decisions, and will be used as the standard against which the organization evaluates the appropriateness of existing systems and salaries.

Typical Components of a Compensation Philosophy Statement

1. Goals and objectives of the compensation program
 - Supports the business strategy
 - Enhances employee productivity and performance
 - Enables a satisfied and effective workforce
 - Achieves the greatest value per compensation dollar
 - Reinforces and supports the desired culture
2. Definition of marketplaces
 - In the region
 - Nationally
 - Among industries that are sources of recruitment
3. Degree of competitiveness
 - At the market median (50% of industry salary ranges)
 - At 75% of industry salary ranges

Sample Compensation Philosophy Statement

(ORGANIZATION) will provide its employees with a total compensation package (including cash compensation, health and welfare benefits, retirement benefits, and perquisites) that is externally competitive, reasonable, and fiscally prudent. The guideline for external competitiveness will be the median salary of (nonprofit membership associations) of comparable size in the (DEFINED GEOGRAPHIC area). (ORGANIZATION) believes in linking compensation and benefits to individual and organizational performance, with fully successful performances being the (ORGANIZATION)'s expectation.

Provided by Karen F. Lehr, Clear Management

Attachment E
Crossroads Community
Compensation Policy for Employees

CROSSROADS COMMUNITY, INC.
POLICIES AND PROCEDURES
100 Personnel

| | | | |
|---------------------|--|------------------------|------------|
| Subject: | 103 Wage & Salary Administration - Compensation Policies | Number: | 103A |
| Application: | All Employees | Date of Review: | 10/23/2014 |
| Standards: | CCI | Date of | 03/26/2013 |
| | | Approval: | |

Policy

Crossroads Community, Inc. (CCI) endeavors to pay salaries competitive with comparable positions within the state system to attract and retain high quality employees. This process involves setting a compensation range for each position.

Total compensation at CCI reflects not only salary and wages but also the mandatory and voluntary benefits that CCI offers. Federal and State law mandates CCI to provide the following benefits:

- Social Security
- Unemployment Insurance
- Worker's Compensation
- Family & Medical Leave (FMLA)
- Military Leave.

CCI voluntarily provides the following benefits:

- Paid Holidays
- Vacation and Personal Leave
- Sick Leave
- Jury Duty Leave
- Leave Without Pay
- Cafeteria Plan
- Health, Dental, and Life Insurance
- Short and Long Term Disability Insurance
- Pension Plan
- Employee Assistance Plan (EAP)
- Tuition Assistance
- Travel Reimbursement
- Participation in the State Employee Credit Union (SECU).

Voluntary benefits are subject to change at any time at the discretion of the Board of Directors.

Procedure

Each salary range is reviewed at least once every two years for potential adjustment. Salary and wages of individual employees are reviewed at least once a year. Factors to be considered when determining raises, if any, include performance appraisals, the CCI budget, job responsibilities, and the recommendation of the immediate supervisor.

Date Last 10/23/2014
Revised:

Special thanks to Crossroads Community for granting Maryland Nonprofits and the Standards for Excellence Institute permission to include this policy into this Educational Resource Package.

Attachment F

Crossroads Community Board Review of Executive Director's Salary

CROSSROADS COMMUNITY, INC. POLICIES AND PROCEDURES **100 Personnel**

| | | | |
|---------------------|---|------------------------|------------|
| Subject: | 103 Wage & Salary Administration - Board Review of Executive Director's Salary | Number: | 103B |
| Application: | Board of Directors & Executive Director | Date of Review: | 10/23/2014 |
| Standards: | Standards for Excellence | Date of | 03/26/2013 |
| | | Approval: | |

Policy

Compensation for the Executive Director is reviewed by the Board of Directors. In reviewing and approving the compensation for this position, the Board of Directors or a delegated committee of the Board adheres to the following:

1. The compensation must be approved in advance (before any payment is made) by a Board composed entirely of individuals who do not have a conflict of interest with respect to the compensation arrangement.
2. Neither the Executive Director nor any of his/her family members may be present during the decision/debate or participate in the vote.
3. When the Board is considering compensation for the Executive Director, it must rely on comparability data that demonstrates the fair market value of the compensation in question. **Note:** This data may include compensation studies such as the MHA Salary Survey, State of Maryland pay scales, documented telephone calls about similar positions in both nonprofit and for-profit organizations; or information obtained from the IRS Form 5500 filings of similar organizations.
4. The Board must document how it reached its decisions, including the data on which it relied. Adequate documentation, either written or electronic must note:
 - The terms of the compensation and the date it was approved
 - The members of the Board who were present during the discussion on the compensation that was approved and those who voted on it
 - The comparability data obtained and relied upon, and how the data was obtained.
 - Any actions taken with respect to consideration of the compensation by anyone who is otherwise a member of the Board but who had a conflict of interest with respect to the decision on the compensation.

Special thanks to Crossroads Community for granting Maryland Nonprofits and the Standards for Excellence Institute permission to include this policy into this Educational Resource Package.

Attachment G

Model Compensation Policy

ABC NONPROFIT Compensation Policy

In compliance with Internal Revenue Service guidelines for approval of senior management compensation, the Board of Directors of ABC Organization (“ABC”) will follow the following review and approval guidelines.

Individuals Subject to this Policy (defined as “Covered Individuals”):

- Chief Employed Executives: The individual or individuals who have the ultimate responsibility for implementing the decisions of ABC’s governing body or for supervising the management, administration, or operations of ABC, including ABC’s top management official and top financial official. If this ultimate responsibility resides with two or more individuals who may exercise such responsibility in concert or individually, then each individual should be included.
- Officers: A person elected or appointed to manage ABC’s daily operation, such as a president, vice-president, secretary, or treasurer. The officers of an organization are determined by reference to its organizing document, bylaws, and include, at a minimum, those officers required by applicable state law.
- Key Employees: Individuals who are not a Chief Employed Executive or an officer of ABC, but who meet all of the following criteria:
 1. \$150,000 Threshold. The individual receives reportable compensation¹ from ABC and all related organizations² in excess of \$150,000 for the calendar year ending with or within ABC’s tax year;
 2. Responsibility Criteria. The individual:
 - a. has responsibilities, power or influence over ABC as a whole that is similar to those of officers, directors, or trustees;
 - b. manages a discrete segment or activity of ABC that represents 10% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
 - c. has or shares authority to control or determine 10% or more of ABC’s capital expenditures, operating budget, or compensation for employees.

¹ Compensation that is reported on Form W-2, Box 5, or in Box 1 if the employee’s compensation is not reported in Box 5, or Form 1099-Misc, Box 7, filed for the calendar year ending with or within the organization’s tax year

² An organization that stands in one or more of the following relationships to the filing organization: (1) Parent – an organization that controls the filing organization; (2) Subsidiary – an organization controlled by the filing organization; (3) Supporting/Supported – an organization that is (or claims to be) at any time during the organization’s tax year (i) a supporting organization of the filing organization within the meaning of Section 509(a)(3), if the filing organization is a supported organization within the meaning of Section 509(f)(3), or (ii) a supported organization, if the filing organization is a supporting organization

3. Top 20 Limitation. In addition to meeting the \$150,000 threshold and the Responsibility Criteria, the individual is one of the top 20 most highly compensated employees (including all income from ABC and related organizations) for the calendar year ending with or within ABC's calendar year.

Procedure for Approving Compensation

In reviewing and approving the compensation of any Covered Individuals, the ABC Organization Board of Directors, or a delegated committee of the Board (referred to as the "Approval Body" below), will utilize the following process:

1. Impartial Decision Making. The compensation arrangement must be approved in advance (before any payment is made) by the Approval Body of ABC composed entirely of individuals who do not have a conflict of interest with respect to the compensation arrangement (example: neither the executive whose compensation is being determined nor any of his/her family members may be present during the discussion/debate or participate in the vote).
2. Comparability Data. When the Approval Body is considering compensation to Covered Individuals, it must rely on comparability data that demonstrate the fair market value of the compensation in question. For example, when crafting compensation packages, the Approval Body must secure data that documents compensation levels for similarly qualified individuals in like positions at like organizations. This data may include the following:
 - a) expert compensation studies by independent firms;
 - b) written job offers for positions at similar organizations;
 - c) documented telephone calls about similar positions at both nonprofit and for-profit organizations; and
 - d) information obtained from the IRS Form 550 filings of similar organizations.
3. Concurrent Documentation. The Approval Body must document how it reached its decisions, including the data on which it relied. To qualify on concurrent documentation, written or electronic records of the Approval Body (such as meeting minutes) must note:
 - a) the terms of compensation and the date it was approved;
 - b) the members of the Approval Body who were present during the debate on the compensation that was approved and those who voted on it;
 - c) the comparability data obtained and relied upon and how the data were obtained; and
 - d) any actions taken with respect to consideration of the compensation by anyone who is otherwise a member of the Approval Body but who had a conflict of interest with respect to the decision on the compensation.

Addition to Conflict of Interest Policy
To Cover Compensation of Officers
And other transactions with Disqualified Persons

* * * * *

Compliance with Federal Law on Excess Benefit Transactions

In any transaction between the Corporation and a “disqualified person” (generally, an officer, director, and certain related individuals or entities, or any other person in a position to exercise substantial influence over the Corporation within the last five years) as set forth in Section 4958 of the Internal Revenue Code, the Corporation shall seek to take advantage of the safe harbor provisions under applicable Treasury Regulations. Specifically, the Board will observe as closely as possible the following procedures:

- (1) The transaction will be approved only if its terms are reasonable, in the case of compensation arrangements, or at fair market value, in the case of transfer or use of property;
- (2) The transaction will be approved in advance by a body of Directors or other appropriate decision makers who do not have any conflict of interest in regard to the transaction;
- (3) The approving body will obtain and rely upon appropriate data as to comparable transactions involving similarly situated organizations; and
- (4) At the time of approving the transaction, the approving body will document its basis for determining that the transaction is fair and reasonable.

Nonprofit Issues[®]/PANO webinar

CONFIDENTIALITY POLICY

Purpose

Because of the nature of much of the work of the organization, all employees should be fully aware of the confidentiality of material and information with which they work. Personal data should remain confidential at all times. No employee is to discuss any confidential information that they become aware of during the course of performing their job unless, of course, it is necessary to perform their job. This duty to preserve confidentiality continues even after you leave the employ of the organization.

No one is permitted to remove or make copies of confidential organizational records, reports, or documents without prior approval of the Executive Director. Failure to adhere to this policy or any breach of confidentiality will result in disciplinary action, up to and including termination.

To safeguard the individual rights of persons served by the organization by maintaining the confidentiality of the programs and any services that they receive or participate in from the organization as provided by law.

Relationship to Mission/Vision/Values

The organization is committed to providing services which treat people with dignity and respect, taking particular care to see that their rights are fully protected.

Policy

- I. Information about the identity, diagnosis, evaluation, or treatment of a person served is confidential.
- II. All records and other information, paper based and electronic, which identify a person served, will be maintained and stored, in a secure environment – for paper-based they should be secured in locked files and for electronic files they should be password protected and/or destroyed (shredded) pursuant to all legal requirements.
- III. Such information will be released only:
 - A. With proper authorization by the person served or his/her legal guardian or other legally authorized representative; or
 - B. Where specifically authorized by law.
- IV. The Executive Director shall be responsible for the establishment and implementation of procedures pursuant to this policy. Such procedures shall apply to all employees, consultants, volunteers, contracting agencies, and affiliates. Such procedures shall comply with all appropriate statutes, rules, regulations, and other legal requirements.
- V. All employees, consultants, volunteers, contracting agencies, and affiliates shall be appropriately trained concerning this policy on confidentiality. Any violators of this policy or the procedures implementing this policy will be subject to disciplinary action, including possible discharge from employment or other affiliation.

Signature of Staff/Volunteer/Consultant

Date

Is This a Good Confidentiality Policy?

ABC Nonprofit Organization Confidentiality Policy Statement for Board

Nonprofit Board members have a fiduciary duty of loyalty. One aspect of the duty of loyalty is the duty of confidentiality. As a member of the Board of the ABC Organization, I appreciate the sensitive nature of information received and generated by the ABC Organization. Accordingly, I acknowledge the following as a matter of policy adopted by the Board of ABC Organization:

- Discussions, related materials and information are presumed confidential and for ABC Organization internal use only.
- Board members' conduct will assure that the respect and confidence of all staff, volunteers, clients and members of the public is honored. This confidence may not be betrayed by divulging information obtained to anyone other than other members of the ABC Organization Board unless such disclosure is otherwise approved by the Board Chair or President of the Corporation.
- The public is encouraged to utilize ABC Organization information readily available through our web site, printed information disseminated to the public and publicly available regulatory filings. Board members shall not act as the spokesperson for ABC Organization unless asked to do so by the current designated spokesperson for ABC Organization.
- When decisions resulting from board discussions are reached, those decisions are confidential unless otherwise directed that the decisions can be made public. Confidentiality is critical in matters dealing with highly sensitive areas, e.g., personnel issues.
- As ambassadors for ABC Organization, all those associated with ABC Organization should be well informed and able to discuss ABC Organization's mission, activities and decisions with the general public.

I have read, understand and acknowledge that I shall comply with my responsibilities as set forth in this policy statement.

Board Signature

Date

Board Name (Printed)

Excerpt from
Draft Conflict of Interest and Confidentiality Policy
Of _____ University

Confidentiality. It shall be the policy of _____ that trustees of _____ may not disclose, divulge, or make accessible confidential information belonging to, or obtained through their affiliation with _____ to any person, including relatives, friends, and business and professional associates, other than to persons who have a legitimate need for such information and to whom the University has authorized disclosure. Trustees shall use confidential information solely for the purpose of performing services as a trustee for _____. This policy is not intended to prevent disclosure where disclosure is required by law.

Nonprofit Issues[®] / PANO Webinar, May 17, 2016.

Code of Ethics and Confidential Information Policy

Members of the Board of Directors, Directors Emeritus, committee members, Management and _____, Inc. ([ORGANIZATION]) staff shall at all times abide by and conform to the following code of ethics:

1. All above will abide in all respects by the [ORGANIZATION] Code of Ethics and Confidentiality Agreement and all other rules and regulations of [ORGANIZATION] (including but not limited to [ORGANIZATION]'s Articles of Incorporation and Bylaws) and will ensure that their position in [ORGANIZATION] for which they serve as officer, director, management or employee, as the case may be, remains in good standing at all times. Furthermore, each member of the Board of Directors will at all times obey all applicable federal, state and local laws and regulations and will provide or cause to provide the full cooperation of [ORGANIZATION] when requested to do so by those institutions and their persons set in authority as are required to uphold the law.
2. Members of the Board of Directors, Management and employees will conduct the business affairs of the Corporation in good faith and with honesty, integrity, due diligence, and reasonable competence.
3. Members of the Board, any other person serving on a committee of the Board, and [ORGANIZATION] staff may use Confidential Information obtained through their service to [ORGANIZATION] solely for the purpose of performing services for [ORGANIZATION] and may not disclose, divulge, or make accessible Confidential Information to any person other than to persons to whom the [ORGANIZATION] Board has authorized disclosure. Members of the Board, directors emeritus, a committee of the board, or staff may disclose Confidential Information among themselves to the extent necessary to perform their services for [ORGANIZATION].

Confidential Information includes, but is not limited to:

- Personal information, including financial and health information or financial obligations to [ORGANIZATION], relating to any member or resident of [ORGANIZATION].
- Financial information about [ORGANIZATION] that is not otherwise part of public records or has not been disclosed by the Board at a meeting open to the members.
- Employee records, salary information, performance data, etc.
- Board committee and Board executive session discussions, except to the extent that the conclusion of those discussions need be disclosed at an open Board meeting or otherwise disclosed to the public.
- Information about any pending or potential litigation or investigation involving [ORGANIZATION] or any member of [ORGANIZATION].
- The identity of a whistleblower who has filed a complaint with the Board, except to the extent necessary to resolve the matter complained of.

Confidential Information does not include:

- Information that is required to be disclosed by law.
- Information that is already of public record or has become generally known to the public.

At the end of a person's term in office or on a committee or as staff (for any reason), such person shall, upon request of [ORGANIZATION], destroy or return all documents, papers, and other materials that may contain such Confidential Information.

4. Members of the Board of Directors will exercise proper authority and good judgment in their dealings with [ORGANIZATION] employees, Management, vendors, resident members and the general public, and will respond to the needs of [ORGANIZATION]'s members in a responsible, respectful, and professional manner.
5. No member of the Board of Directors will use any information provided by [ORGANIZATION] or acquired as a consequence of the Board member's service to [ORGANIZATION] in any manner other than in furtherance of his or her Board duties without the approval of the Executive Committee of [ORGANIZATION]. Further, no member of the Board of Directors will misuse [ORGANIZATION] property or resources and will at all times keep [ORGANIZATION] property secure and not allow any person not authorized by the Board of Directors to have or use such property.
6. No member of the Board of Directors shall persuade or attempt to persuade any [ORGANIZATION] employee to leave the employ of [ORGANIZATION] or to become employed by any person or entity other than [ORGANIZATION] except to the extent authorized by the Executive Committee of [ORGANIZATION]. Furthermore, no member of the Board shall persuade or attempt to persuade any advertiser, subscriber, supplier, contractor, or any other person or entity with an actual or potential relationship to or with [ORGANIZATION] to terminate, curtail, or not enter into its relationship to or with [ORGANIZATION], or to in any way reduce the monetary or other benefits to [ORGANIZATION] of such relationship.
7. The Board of Directors must act at all times in the best interests of [ORGANIZATION] and not for personal or third-party gain or financial enrichment. When encountering potential conflicts of interest, Board members will identify the conflict and, if requested by any member of the Board or committee considering such matter, remove themselves from all discussion on the matter. No member of the Board shall vote on any matter in which such Director has a conflict.

Statement of Understanding and Agreement

I am aware that, during the course of my service to [ORGANIZATION] as a Director, Director Emeritus, member of a Board committee, or staff, Confidential Information may be made available to me and agree not to disclose, divulge, or make accessible Confidential Information to any other person except as permitted by the [ORGANIZATION] Code of Ethics and Confidential Information Policy. I have read and understand the Code of Ethics and Confidential Information Policy of [ORGANIZATION] and agree to abide by the terms thereof.

Signature

Date

Print Name _____

Welcome to...

5 Critical Policies for Nonprofits



**PRESENTED BY:
DON KRAMER, ESQ.
EDITOR, *NONPROFIT ISSUES*®**

&



**TISH MOGAN
STANDARDS FOR EXCELLENCE DIRECTOR
PANO**

About PANO



PANO amplifies the impact of Pennsylvania's Community Benefit Sector through advocacy, collaboration, learning and support.

The Benefit of Membership

Education Programs *(including workshops, seminar and webinars on governance, fundraising, legal issues, grant writing accounting and budgeting)*

Advocacy

Leadership Development

Resource Library

Technical Assistance

Discounted Services

Standards for Excellence Program®



About *Nonprofit Issues*[®]



Nonprofit Issues[®] is a national Web newsletter of "Nonprofit Law You Need To Know." Written for nonprofit executives and their advisors, *Nonprofit Issues* provides clear, concise and comprehensive coverage of real issues that affect nonprofits every day.

Conflict of Interest Policy

Rationale

Good governance
Prohibition?

Trust

Form 1023

Form 990

Excess Benefit Transactions

State law limitations

Conflict of Interest Policy

Who is covered?

Board, staff, volunteers
Significant others who live in household
Families and businesses
Business associates

What is covered?

Financial conflicts
Positional conflicts



Conflict of Interest Policy

No private benefit from information

What is not covered?

Transactions with affiliates?

Disclosure of conflict with affiliate?

General policies affecting individuals?

Conflict of Interest Policy

Financial Conflicts



Direct or indirect interest

Ownership or material ownership

Gratuities

Potential conflict

Administration of contracts

Conflict of Interest Policy

Disclosure and determination



To whom, by whom?

When

Recusal and exit

Duty of decision makers

Conflict of Interest Policy

Annual disclosure statement

PA Solicitation Act add-on

Sanctions for violation

Include in bylaws?

Whistleblower Policy



Rationale

Sarbanes-Oxley

State whistleblower protection

Good governance

Who is covered?

Board, staff, volunteers

Vendors?



Whistleblower Policy



What is covered?

- ✓ Criminal acts
- ✓ Illegal acts
- ✓ Improper use of assets
- ✓ Violations of policies
- ✓ Violation of ethical duties

Whistleblower Policy



Confidentiality

Retaliation

Good faith reporting

Is policy binding?



Whistleblower Policy



Reporting

To whom?

How?

Anonymous?



Responsibility for investigation

Record Retention Policy

Rationale

Save space, Save money

Good governance/Consistency within the organization

Form 990

Sarbanes-Oxley Act

Federal Laws requiring retention of certain records

State Laws requiring retention of certain records

(varies by state)

Record Retention Policy

IRS Form 990 – Instructions

“A document retention and destruction policy identifies the record retention responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization’s documents and records”.



Record Retention Policy

Sarbanes – Oxley Act

Section 802 - Section 1519



Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

Record Retention Policy

Considerations

- ☐ Policy, once enacted must be followed
- ☐ Emails
- ☐ Text Messaging
- ☐ Instant Messaging
- ☐ Use of Personal email accounts
- ☐ Voice mail
- ☐ Video
- ☐ Does counsel retain everything?

Record Retention Policy



Legal Hold

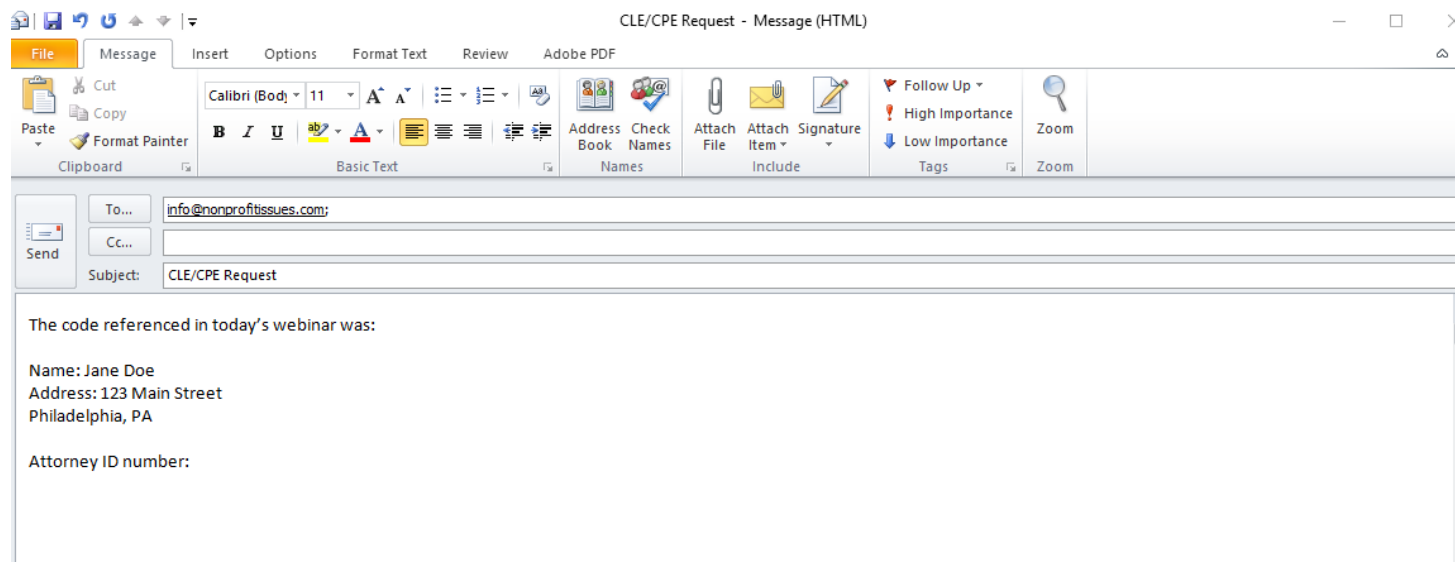


CLE & CPE Credit

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Example:



Record Retention Policy

Educating Staff and Board:

- 1) Some include in employee handbook
- 2) Include oversight in at least one person's job description

Compensation Policy

Rationale

Good Governance

Excess Benefit Protection

Form 990

State Laws

Compensation Policy

Covered Persons

Procedures for Determining Compensation

Fair and Reasonable Compensation

Safe harbor

Failure to Comply/Penalties

Confidentiality Policy

Staff and volunteer policy

Board governance policy

Is everything assumed to be confidential?

Is duty of confidentiality included within duty of loyalty?

Is information confidential even if public?

Confidentiality Policy

Should Board Chair or CEO alone authorize disclosures?

May directors not act as spokespersons for organization?

Does confidentiality differ in a membership corporation?

May appointee not discuss information with appointing authority?

Can director serve as ambassador if unable to discuss decisions?

Questions?



Our Contact Information



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NONPROFIT ISSUES

Constant Contact Survey Results

Survey Name: 5 Critical Policies Webinar - PACLE Survey 4-25-19


Response Status: Partial & Completed

Filter: None

2/3/2021 12:56 PM EST

PACLE requires that we submit course evaluations for our recent program. Please take a moment to rate the program

1 = Failed to Meet Expectations, 2 = Needs Improvement, 3 = Met Expectations, 4 = Exceeded Expectations, 5 = Excellent

| Answer | 1 | 2 | 3 | 4 | 5 | Number of Response(s) | Rating Score* |
|-------------------|--|---|---|---|---|-----------------------|---------------|
| Overall Quality |  | | | | | 3 | 5.0 |
| Written Materials |  | | | | | 3 | 4.3 |
| Instructor |  | | | | | 3 | 5.0 |
| Ease of Use |  | | | | | 3 | 5.0 |

*The Rating Score is the weighted average calculated by dividing the sum of all weighted ratings by the number of total responses.