

NOT-FOR-PROFIT INSIDER

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TOP TEN LIST FOR SOUND NONPROFIT BOARD GOVERNANCE

Often times what attracts a person to a nonprofit board is a shared interest or passion for the mission of an organization. Of course this is important, as a board position requires an ample amount of volunteer time. However, it is important for board members to not lose sight that they are ultimately tasked with the governance of the organization. A point that should not be taken lightly. The importance of this responsibility is demonstrated by the IRS annual Return of Organization Exempt from Income Tax (Form 990) which dedicates an entire

section to governance, management and disclosure, and includes a list of all board members.

We have pulled together a top ten list to help better understand the notation of good board governance.

1. Understand fiduciary duties

A board position is a responsibility to serve and act with good faith, due care and loyalty towards achieving an organization's mission, ultimately supporting the best interest of the general public.

2. Provide oversight

Although oversight of an organization can come primarily from the staff, it is ultimately and legally the responsibility of the board. To help a board with oversight, they should have a strong executive director, effective policies and procedures, and committees to help with oversight of specific areas. Committees do not need to be comprised entirely of board members and ideally should include industry experts, for example it is great to have a CPA on the finance committee or an HR professional on a hiring committee.

3. Understand roles and lines of authority

Nonprofits are not owned, no one person – director, founder or even committee, can control the organization. The organization should be set up so that there are no controlling parties. The Form 990 emphasizes this through required disclosure of independent board members, as well as disclosure of related parties. Should it be determined that there is not sufficient independence among board members, the door is then open for the IRS to re-classify the organization as a private foundation. Additionally, neither the board chair nor the organization's executive director should be considered the ultimate line of

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*The next level
of service*

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authority. The chair's role is to preside over the board and sometimes to act as the liaison between the executive director and the board. And although the executive director is tasked with leadership of the organization, it is the board's responsibility to hire the executive director, review their performance and approve their compensation. Critical decisions should be brought to the board's attention and then supported by a board majority vote.

4. Let staff do their job

Boards should not be engaged in micro managing staff, their engagement with staff should be limited to occasional oversight. More importantly the board is responsible for hiring and evaluating the executive director, who is in turn responsible for managing staff. On the flip side, staff should not ask board members to be involved in the day to day operations as this can easily blur the lines of responsibility.

5. Understand the laws governing tax exempt organizations

Nonprofits are granted tax exempt status by the IRS, and this is where regulation typically occurs. There are several rules an organization must follow to ensure it keeps its tax exempt status. Visit www.uhy-us.com/News-Events/Article/829/Maintain-Your-Tax-Exempt-Status to learn how to maintain your tax-exempt status. In addition, a nonprofit must be in good standing with any local or state regulations in order to maintain their tax exempt status with the IRS.

6. Keep governing documents up to date

Over time organizations can change; and although they should strive to operate in support of their original purpose, it is not uncommon for the mission and vision to change. Take time to periodically review the mission and vision and if things are different, update accordingly. Also, make sure bylaws are reviewed on a periodic basis

and that the organization remains in compliance with the bylaws. If the organization's structure requires change, then update the bylaws accordingly. For example, board terms, term limits or the number of board members allowed per the bylaws may no longer be the most effective operating structure. Change is okay, and often change can be good – just make sure to keep the organizational documents aligned.

7. Ensure programing is effective

It is easy for organizations to undergo mission drift, especially if there is a constant need to pursue funding through creating that next program that will pull in the money. Make sure programs support the purpose and mission of the organization, and make sure there is a way to access outcomes and effectiveness. The board should receive periodic reports on the programs that includes a review of outcomes and effectiveness. Don't settle for a verbal – "everything is going great" from the executive director.

8. Strive to cultivate board diversity

As with any good management team, diversity is key. Often, board vacancies are filled by a board member reaching out to a trusted friend or advisor – people that often have similar backgrounds and viewpoints. Strive to fill open board positions by those with different skills sets and backgrounds and also ensure that your board represents the community that they are serving. Assess skill sets of current board members and determine if any skills are missing. An accountant, lawyer, social media guru or someone with fundraising or event planning experience are good additions to any board. Also, make sure that the board has someone with a knowledge base and expertise regarding the organization's program objectives.

9. Performance evaluations for executive directors

In the for profit world, CEOs and executives are judged by the financial

success of the organizations. Just because a nonprofit does not have this type of easily identifiable indicator does not mean it is okay to pass on measuring performance. Make sure to establish performance measures that align with the goals, visions and mission of the organization and then hold the leader accountable for pushing the organization in that direction.

10. Document all actions appropriately

Board minutes should be a building block for institutional knowledge as well as a record of important decisions or directives. Board minutes should not be an exact transcript of the meeting, nor should the minutes be only a record of motions for votes. They need to be somewhere in the middle. The minutes should provide enough information for a new board member to step in, read the minutes from the prior year and feel they are up to speed on the priorities, concerns and vision for the organization. In addition, the minutes should always note regarding review of the finances to demonstrate fiscal responsibility.



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BEST PRACTICES IN RETIREMENT PLAN ADMINISTRATION



There are many intricacies involved in administering retirement plans. The implementation of sound internal controls is necessitated by the many rules retirement plans are subject to, and by the fact that some of those rules tend to change quite frequently. Because of the complexity of those rules, mistakes (generally human errors) can occur in almost all retirement plans, even plans run by experts.

Even though there are obvious differences between the responsibilities surrounding small and large plans

(large plans being those with over 100 participants), there are certain best practices that prudent plan sponsors should be implementing, regardless of their plan size.

One of the first steps a plan sponsor should take is to do an overall review of the following areas:

- Plan documentation,
- Plan officials and fiduciary responsibilities,
- Operational compliance,
- Operational internal controls, and
- Reporting.

Plan documents should be organized and easily accessible, and generally should include—

- Executed plan document (adoption agreement for prototype or volume submitter plans);
- Plan amendments executed after the original plan adoption;
- IRS determination or opinion letter for the executed plan document;
- Agreements with service providers, including plan custodian, record keeper, third-party administrators (TPAs), etc.;
- Summary plan description and (if applicable) summaries of material modifications;
- Minutes of meetings of the governance committee;
- Fidelity bond insurance covering plan officials;
- Form 5500 (subject to the six-year retention requirement of ERISA Section 107);
- Audited financial statements (if applicable, also subject to the six-year retention requirement);
- Internal checklists and procedural manuals; and
- Other agreements or important correspondence related to the plan.

Plan officials and fiduciary responsibilities

Fiduciaries and any other individuals (plan sponsor officers, employees, and such) who handle plan assets are generally referred to as plan officials. Fiduciaries control and manage the operation and administration of the plan, including its investments. ERISA requires a retirement plan to have one or more named fiduciaries, one of whom serves as plan administrator.

A fiduciary must be identified as such in the plan document and can be an individual, group of individuals (committee), or the employer (company). Fiduciaries have

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discretionary authority or responsibility for the plan administration; exercise discretionary authority or control over plan management or plan assets; and/or provide investment advice.

And while discretion involves judgment and the authority to act in different situations, to act in a fiduciary capacity means that all actions taken must 1) be in the best interest of the plan participants and beneficiaries (not the plan sponsor or management of the company) and 2) be in accordance with the terms of the plan document and ERISA.

Even if not designated a fiduciary, a person may become an “accidental fiduciary” by taking on discretionary authority over the administration of the plan or management of the plan assets. An important fact to remember is that fiduciaries can be held personally liable for breach of their responsibilities.

Operational compliance and internal controls

Plans must comply with the provisions in the plan document and the applicable ERISA, DOL and IRS rules and regulations. Plan sponsors should be aware of the applicable regulations and implement an effective system of internal controls to ensure proper and timely compliance. Internal controls are most effective when the processes and procedures are documented and the responsible persons identified. Special attention should be paid to high-risk areas. To ensure compliance plan sponsors should—

- Review plan eligibility provisions and make sure actual practices follow the plan provisions;
- Review the plan’s definition of compensation and make sure the payroll system setup uses the proper compensation;
- Be aware of the parties in interest with regards to the plan (usually the plan sponsor, fiduciaries or employees of the plan, or any person who provides services to the plan);

- Monitor the timeliness of the remittance of employee contributions and loan payments;
- Regularly review participant data provided to the TPA;
- Monitor participant loans (if participant loans are allowed by the plan document) including maximum loan amount limits, proper loan documentation and proper identification and treatment of defaulted loans;
- Monitor distributions and make sure proper approvals and support are maintained; pay special attention to compliance with plan provisions regarding hardship distributions and small balance cash outs);
- Review administrative fees being charged to the plan for reasonableness;
- Make sure all required plan tests, filings, and documents are completed by the required deadlines, e.g. year-end compliance tests (non-discrimination, and such.); required disclosures to plan participants; Form 5500; and
- Review the plan participant count annually to comply with the audit requirement for large plans (more than 100 participants).

Reporting

Plan officials should be aware of their rights and obligations with regards to plan reporting. Reporting under the plan generally includes reporting by the plan TPA, custodian or trustee and reporting for which the plan sponsor is responsible.

- The TPA (the trustee or custodian if no TPA exists) prepares reports in the form of monthly and/or quarterly and annual statements detailing the plan balances and transactions for the plan sponsor and participants;
- Both small and large plans file Form 5500 with the IRS (due seven months after the plan’s fiscal year end); and
- Large plans are required to attach audited financial statements to the Form 5500 when filed.

Administering a retirement plan is not the same as simply knowing the applicable regulations and fiduciary responsibilities. It is much more than that. Retirement plan administration encompasses the structure of plan officials, the plan operation processes, the operational compliance and system of internal controls and management of the plan assets in accordance with the plan terms, ERISA regulations, and DOL and IRS rules.

One of the most important things plan sponsors can do to minimize the risk of non-compliance and costly errors is to implement a good system of plan administrative policies and procedures, and to provide continuous oversight.



An important fact to remember is that fiduciaries can be held personally liable for breach of their responsibilities.



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NOT-FOR-PROFIT INDUSTRY INSIGHT

With the increasing complexity of laws and regulations, it's important for associations, foundations, charities, hospitals, schools and other tax-exempt entities to seek out professionals with extensive experience in nonprofit compliance issues. We understand there are many challenges affecting the industry and provide the attention needed to help clients stay focused on their job at hand.

UHY LLP's National Not-For-Profit Practice offers comprehensive audit and assurance, tax planning and compliance and business advisory services to meet the unique, complex needs of nonprofit organizations.

These types of specialized services, which cut across the traditional service lines, demonstrate our philosophy of skilled professionals integrating industry expertise with technical services.

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