

Sarbanes-Oxley Act and Implications for Nonprofits

Created to rebuild public trust in the corporate community in the wake of corporate and accounting scandals, the federal legislation that has become known as the Sarbanes-Oxley Act requires publicly traded companies conform to new standards in financial transactions and audit procedures. As state officials explore ways to apply elements of the law to the nonprofit sector, BoardSource and Independent Sector offer the publication, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations*, which provides nonprofit leaders practical recommendations on promoting effective oversight of their organizations.

Independent Sector and BoardSource recommend that nonprofits voluntarily incorporate certain provisions of the Act that make good governance sense.

A checklist for nonprofits and foundations includes:

1. Insider Transactions and Conflicts of Interest

- Understand and fully comply with all laws regarding compensation and benefits provided to directors and executives (including "intermediate sanctions" and "self-dealing" laws).
- Do not provide personal loans to directors and executives.
- In cases in which the board feels it is necessary to provide a loan, however, all terms should be disclosed and formally approved by the board, the process should be documented, and the terms and the value of the loan should be publicly disclosed.
- Establish a conflict of interest policy and a regular and rigorous means of enforcing it.

2. Independent and Competent Audit Committee

- Conduct an annual external financial audit (the boards of very small organizations, for whom the cost of an external audit may be too burdensome, should at least evaluate carefully whether an audit would be valuable).
- Establish a separate audit committee of the board.
- Board members on the audit committee should be free from conflicts of interest and should not receive any compensation for their service on the committee.
- Include at least one "financial expert" on the audit committee.
- The audit committee should select and oversee the auditing company and review the audit.
- Require full board to approve audit results.
- Provide financial literacy training to all board members.

3. Responsibilities of Auditors

- Rotate auditor or lead partner at least every five years.
- Avoid any conflict of interest in staff exchange between audit firm and organization.
- Do not use auditing firm for non-auditing services except tax form preparation with pre-approval from audit committee.
- Require disclosure to audit committee of critical accounting policies and practices.
- Use audit committee to oversee and enforce conflict-of-interest policy.

4. Certified Financial Statements

- CEO and CFO should sign off on all financial statements (either formally or in practice), including Form 990 tax returns, to ensure they are accurate, complete, and filed on time.
- The board should review and approve financial statements and Form 990 tax returns for completeness and accuracy.

5. Disclosure

- Disclose Form 990 and 990-PF in a current and easily accessible way (also required of all nonprofit organizations by IRS law).
- File 990 and 990-PF Forms in a timely manner, without use of extensions unless required by unusual circumstances.
- Disclose audited financial statements.
- Move to electronic filing of Form 990 and 990-PF.

6. Whistle-Blower Protection

- Develop, adopt, and disclose a formal process to deal with complaints and prevent retaliation.
- Investigate employee complaints and correct any problems or explain why corrections are not necessary.

7. Document Destruction

- Have a written, mandatory document retention and periodic destruction policy, which includes guidelines for electronic files and voicemail.
- If an official investigation is underway or even suspected, stop any document purging in order to avoid criminal obstruction.

For a discussion of the law and recommendations for nonprofits and foundations, see the BoardSource-Independent Sector publication, [*The Sarbanes-Oxley Act and Implications for Nonprofit Organizations*](#) (PDF).

