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Conflicts of Interest

A policy governing conflicts of interests is perhaps the most important policy a nonprofit board can adopt. To have the most impact, the policy should be in writing, and the board and staff should review the policy regularly.

What should a conflicts of interest policy include?

A policy on conflicts of interest should (a) require those with a conflict (or who think they may have a conflict) to **disclose** the conflict/potential conflict, and (b) **prohibit interested** board members **from voting** on any matter in which there is a conflict.

- Beyond including those two basic directives, each nonprofit needs to determine how the board will manage the conflict.
- Keep in mind that the [IRS Form 990](#) asks not only about whether the nonprofit has a written policy on conflicts of interest, but also about the process that the nonprofit uses to manage conflicts, as well as how the nonprofit determines whether board members have conflicting interests.
- Some state laws governing nonprofit corporations include provisions describing what must be included in a nonprofit's conflict of interest policy, or how conflicts are to be managed. For example, New York law requires nonprofits to

have a conflict of interest policy and the state law also provides guidance for drafting the policy, which must state that directors, officers and key employees are to act in the "best interest of the nonprofit." New York law also requires nonprofit boards to adopt a process so that board members can annually disclose potential conflicts. See [New York Nonprofit Revitalization Act of 2013](#).

WARNING

Conflicts that are not managed can result in significant penalties, called "[intermediate sanctions](#)," assessed against the [person who benefits](#) as well as against the organization. (See IRS information on "[excess benefit transactions](#).")

Practice Pointers

Often people are unaware that their activities or personal interests are in conflict with the best interests of the nonprofit so a goal for many organizations is to simply raise awareness, encourage disclosure and discussion of anything that MAY be a conflict, and constantly encourage a "culture of candor."

1. Conflicts can be nuanced and have more to do with a "duality of interests" than a financial conflict. Here's an example of a conflict policy that explicitly acknowledges how the nonprofit will address [duality of interests](#). Read about a [3-dimensional view of conflicts](#) (Blue Avocado).
2. Many charitable nonprofits make it a regular practice to take time at a board meeting at least once a year to discuss the types of hypothetical situations that could result in a conflict of interest, and then discuss how the board would manage that potential conflict, role-playing, so that when a real conflict arises the board will be ready to handle it with more ease.
3. Minutes of board meetings should reflect when a board member discloses that s/he has a conflict of interests and how the conflict was managed, such as that there was a discussion on the matter without the board member in the room, and that a vote was taken but that the "interested" board member abstained (board members with a conflict are "interested" – board members without a conflict are "disinterested").
4. Many nonprofits circulate a questionnaire each year to find out whether any board member (or staff member) has a conflict of interest. Typically the questionnaire asks board and staff members to disclose existing conflicts and

reminds them to disclose any that may crop up in the future.

Additional Resources

- Sample Conflicts of Interest Policies for [small nonprofits](#) and [large nonprofits](#) (Nonprofit New York)
- [Sample Conflict of Interest Policy and Annual Statement](#) (Montana Nonprofit Association)
- [Sample conflict of interest policy](#) (Public Counsel Law Center)
- [Conflicts of Interest: disclosure, monitoring, and enforcement](#) (Probono Partnership)
- [IRS statement on the purpose of a conflict of interest policy](#) (IRS)
- State specific [Principles and Practices/Standards for Excellence®](#) programs may also offer guidance on conflicts of interest.

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