

Nonprofits and Sarbanes-Oxley

There are 10 general principles of corporate governance emerging from the Sarbanes-Oxley reforms, which may be worthy of consideration for the governance of nonprofit organizations:

Principle 1—Role of Board: The organization’s governing board should oversee the operations of the organization in such manner as will assure effective and ethical management.

Principle 2—Importance of Independent Directors: The independent and non-management board members are an organizational resource that should be used to assure the exercise of independent judgment in key committees and general board decision-making.

Principle 3—Audit Committee: An organization with significant financial resources should have an audit committee composed solely of independent directors, which should assure the independence of the organization’s financial auditors, review the organization’s critical accounting policies and decisions and the adequacy of its internal control systems, and oversee the accuracy of its financial statements and reports.

Principle 4—Governance and Nominating Committees: An organization should have one or more committees, composed solely of independent directors, that focus on core governance and board composition issues, including: the governing documents of the organization and the board; the criteria, evaluation, and nomination of directors; the appropriateness of board size, leadership, composition, and committee structure; and codes of ethical conduct.

Principle 5—Compensation Committee: An organization should have a committee composed solely of independent directors that determines the compensation of the chief executive officer and determines or reviews the compensation of other executive officers, and assures that compensation decisions are tied to the executives’ actual performance in meeting predetermined goals and objectives.

Principle 6—Disclosure and Integrity of Institutional Information: Disclosures made by an organization regarding its assets, activities, liabilities, and results of operations should be accurate and complete, and include all material information. Financial and other information should fairly reflect the condition of the organization, and be presented in a manner that promotes rather than obscures understanding. CEOs and CFOs should be able to certify the accuracy of financial and other disclosures, and the adequacy of their organizations’ internal controls.

Principle 7—Ethics and Business Conduct Codes: An organization should adopt and implement ethics and business conduct codes applicable to directors, senior management, agents, and employees that reflect a commitment to operating in the best interests of the organization and in compliance with applicable law, ethical business standards, and the organization’s governing documents.

Principle 8—Executive and Director Compensation: Executives (and directors if appropriate) should be compensated fairly and in a manner that reflects their contribution to the organization. Such compensation should not include loans, but may include incentives that correspond to success or failure in meeting performance goals.

Principle 9—Monitoring Compliance and Investigating Complaints: An organization should have procedures for receiving, investigating, and taking appropriate action regarding fraud or noncompliance with law or organization policy, and should protect “whistleblowers” against retaliation.

Principle 10—Document Destruction and Retention: An organization should have document retention policies that comply with applicable laws and be implemented in a manner that does not result in the destruction of documents that may be relevant to an actual or anticipated legal proceeding or governmental investigation.