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Conflicts of Interest (COI)
Our Intent:
- Understand what is meant by the term “conflicts of interest” and why it matters
- Recognize different ways to assess a conflict of interest
- Apply your understanding of COI to your work serving in a key volunteer or staff role

Conflicts of Interest and the Duty of Loyalty
- One very real expectation is a legal requirement for key volunteers and staff to uphold a “Duty of Loyalty.”
- State laws impose a standard of faithfulness to give undivided allegiance when making decisions affecting the organization.
- This standard means that a board member must always act in the best interests of the organization.

[Ref: BoardSource]
Public Benefit and Transparency

Another expectation of organizational loyalty is from the public. Nonprofit organizations are “public benefit” corporations; the purpose of their existence is to benefit the public as opposed to the private interests of their board members, staff or even of individual clients.

It is one thing to exist for the benefit of the public; it is another to earn the public’s trust through ethical leadership and responsible practices. Increasingly, regulators, charity watchdogs, and the media have raised their voices and thus the pressure on nonprofits to act ethically by forcing nonprofits to be transparent in their financial dealings.

[Ref: National Council of Nonprofits]

Do what’s best for the Nonprofit

• Demonstrate that decisions are made solely on the basis of what is best for the organization.

• Keep in mind: Duty of Loyalty AND Public Expectations

What is a “Conflict of Interest”? 

• “A conflict of interest exists when a board member, officer or management employee has a personal interest that is in conflict with the interests of the organization, such that he or she may be influenced by this personal interest when making a decision for the organization.”

source: “Managing Conflicts of Interest: A Primer for Nonprofit Boards.” by BoardSource

BoardSource Definition: “Who”

• Board members and Committee members
• Officers
• Management employees

For example: in a scientific or medical organization, the definition may extend to technical/scientific staff, volunteers and others

Family Members Count

Transactions benefiting immediate family members of volunteer/staff are considered to be benefits to the volunteer/staff for purposes of assessing COI.

BoardSource Definition: “What”

➤ According to this definition, a conflict potentially exists or arises when personal interests differ from an organization’s interests.
COI Definition – Another View

- Conflicts may not be readily apparent.
- Conflicts are often complicated by the circumstances surrounding the transaction.

COI Definition – A 2nd View

- Oxford University Press:
  "A conflict of interest arises when individuals or organizations enter into a set of arrangements which under usual circumstances would lead to the reasonable presumption that they will be tempted to put aside their primary interests (such as advocacy for the patient and the public health) in favor of a secondary set of interests (the financial well-being of some commercial entity, or their own financial profit)."

Oxford Press Article Definition

- "Set of Arrangements"
  - A conflict of interest may be harder to spot and address when it arises in one area of a larger decision of matter.
- "Perception" and "Presumption" are major factors

Types of Conflicts of Interest

1. Financial vs. Non-Financial
2. Individual vs. Organizational
3. Inconsequential vs. Illegal/Unethical

1. Financial vs. Non-Financial Conflicts of Interest

- Financial implications—such as the Board member’s husband who wanted to bid on the technology project. But not all conflict situations are financial in nature.

- 2 examples of financial conflicts of interest.
Financial Conflicts of Interest

- A nonprofit organization wants to buy property and a Board member owns property that matches the specifications.

- An existing travel vendor provides a staff member free airline tickets in appreciation of the organization’s business.

Non-Financial Conflicts of Interest

Duty of Care

- The legal duty of care refers to the obligation to take an active interest in the affairs of a nonprofit and exercise ordinary care as a steward of the nonprofit’s mission and assets.

Non-Financial Conflicts of Interest

- A board member of ABC Nonprofit may also serve on the board of another youth-serving nonprofit. When both organizations bid for the same Federal contract, the board member is “conflicted” with regard to which organization she will support with time, energy and influence.

Non-Financial Conflicts of Interest

- Additional examples of Dual Loyalties:
  - Serving on two boards that are in a business relationship (e.g., a partnership, grantmaking relationship, etc.).
  - A nonprofit organization provides funding to a program director who works for the same employer as a member of the nonprofit’s Board.

Board Compensation can lead to Conflicting Roles

- Although not prohibited by law, most nonprofit organizations do not compensate voting members of the Board for their Board service.

- In addition, many nonprofits adopt policies that restrict board members from eligibility as paid contractors to the nonprofit. We’ll look at an example next.

SAMPLE Policy on doing Business with Board Members

- Members of the organization’s board of directors are not eligible, as individuals, or in their roles as owners/managers of businesses, to provide the following fee-based services to the organization:
  - Legal services
  - Accounting, financial or investment services
  - Insurance services
Non-Financial Conflicts of Interest
Dual Loyalties and Conflicting Roles

- Heavy-handed oversight is a problem. A Board member who has an interest in managing the daily operations of the organization faces a conflict with her responsibility to provide oversight.

- Hands-off oversight is also a problem. A Board member who is unwilling to engage in governance activity and oversight is in conflict with the needs of the organization and unable to discharge the legal duty of care required of all Board members.

Individual vs. Organizational Conflicts of Interest

- For example: one conflict could create an appearance of individual impropriety (e.g., using travel incentives for personal use instead of making incentives available for other organizational purposes).

- Another conflict could cast suspicion on the credibility of the organization (e.g., a nonprofit that favorably recommends a drug after receiving a large contribution from the related pharmaceutical company).

Inconsequential vs Illegal/Unethical

- In the middle of the continuum are real or perceived conflicts of interest that require careful handling.

- Underestimated → inconsequential
- Overemphasized → illegal/unethical

Organizations Must Address Conflict of Interest Concerns

- Internal Revenue Service
- Panel on the Nonprofit Sector
- Better Business Bureau-Wise Giving Alliance
- New York’s Revitalization Act
If conflicts are not appropriately managed...
- Negative media reporting & loss of public trust
- Legal Action
- Fines and penalties levied through excise taxes
- Revocation of tax exemption or public charity tax status
- More consequences caused by:
  - statute
  - regulation
  - nonprofit sector guidelines or accreditation requirements.

Don’t get Knocked Out
- It could be you!
- The one with the potential conflict is often the last person to realize it.

Are All Conflicts a Bad Thing?
- Negative connotation
- Not always or necessarily a bad thing

COI – Not necessarily a bad thing
"Conflicts of interest are simply a part of life. In serving nonprofit organizations, we should acknowledge and use our relationships to increase the good things that those organizations accomplish. It is not prudent to avoid electing a banker to a nonprofit board because the organization will need to open a savings account. It is shameful if we exclude the people served by a nonprofit organization from the boardroom where those services are developed and debated."

Finding a Balance
- With very real potential consequences, should organizations strive to eliminate all potential conflicts of interest among senior volunteers and staff?
- Practical Process for managing conflicts

COI - Not necessarily a bad thing
"Conflicts of interest are ubiquitous and inevitable in academic life, indeed, in all professional life. The challenge for academic medicine is not to eradicate them, which is fanciful and would be inimical to public policy goals, but to recognize and manage them sensibly and effectively."

[David Korn, JAMA 284, 2234-2236, 2000]
How Organizations Manage COI

- Do nothing for inconsequential or beneficial conflicts
- Disclose the conflict to those involved in the discussion and decision
- Recuse the individual from voting on a policy or transaction related to the conflict
- Prevent the individual from participating in or being present for full discussion on a policy or transaction related to the conflict
- Restrict the individual from creating a specified conflict of interest while serving in a key volunteer or staff role

How you can manage COI

- Understand that COI has a variety of forms
- Gain knowledge on facts and issues to determine a course of action
- Consider your nonprofit’s approach to managing COI
- Monitor COI management trends

Nonprofit COI Trend #1

- “In a recent survey, a fifth of nonprofits (and two-fifths of those with more than $10 million in annual expenses) reported buying or renting goods, services, or property from a board member or an affiliated company within the prior two years.”


Nonprofit COI Trend #2

- Growing recognition that in addition to financial matters, conflicts of interest include the non-financial matters presented earlier — “dual loyalty” or “conflict of loyalties”

Nonprofit COI Trend #3

- Recognition that COIs are multi-facted and multi-dimensional:
  - Primary vs. secondary interests
  - Institutional vs. individual conflicts
  - Real vs. perceived conflicts

Nonprofit COI Trend #4

- Nonprofit leaders are growing more comfortable with the practice or routine of disclosing conflicts.
- An important goal is to make the disclosure of conflicts of interest customary and comfortable.
Nonprofit COI Trend #5
 Managing COIs a balancing act that necessitates flexibility and care.

 The true test of a successfully COI policy “…is how well it is understood and, therefore, how well it serves to surface and address actual conflicts within an organization.”

Board Conflict of Interest Policy
 The Board approved Conflict of Interest Policy affirms the nonprofit’s commitment to make organizational decisions that are not influenced by inappropriate conflicts of interest. Conflicts are managed through disclosure, discussion and in some cases, recusal.

 To reinforce the Duty of Loyalty, the Board policy also:
(1) sets a $250 limit on gifts that may be accepted by volunteers and staff from companies doing business or seeking to do business with the nonprofit, and
(2) emphasizes that confidential/proprietary information may not be used for the personal benefit of an individual or other organization.

How do nonprofits manage COIs?
 Conflict of Interest Policy
 Signed COI disclosures
 Board training/orientation
 Oversight of the COI policy
 COIs reporting policy

Annual Conflict of Interest Disclosures
 Key volunteers and staff must complete an annual Conflict of Interest Disclosure form. The required disclosures include:
• Financial transactions between the individual and the Nonprofit
• Outside activities and transactions of the individual that are indirectly related to the nonprofit
• Gifts, entertainment or other benefits accepted from a company doing business with or seeking to do business with the nonprofit
• Any other potential conflicts of interest, including non-financial conflicts

Get Everyone on Board
Every person serving in a key volunteer or staff role should:
1. Understand that both legal requirements and public expectations require the nonprofit to identify and manage conflicts of interest.
2. Follow the principles in the Duty of Loyalty standard
3. Become knowledgeable about transactions that are restricted for your role per the nonprofit’s COI Policy

Get Everyone on Board
4. Accurately complete the annual COI disclosure form
5. Speak up if you believe you may have a conflict of interest in a matter before the management team or board; willingly recuse yourself from discussion and/or vote if the revelation leads to a decision that doing so is necessary to prevent the downside consequences of a conflict of interest.
6. Report any reasonable belief that a conflict of interest has not been appropriately disclosed or managed according to the guidelines. Reports can go directly to a senior volunteer, senior staff member or anonymously through a Whistleblower hotline
Case Study

- What would you do?

- ABC Nonprofit spends $25,000 annually in property and casualty insurance. A member of the board is an experienced insurance agent who works with nonprofits. The quotes provided by the board member’s agency are less than what the nonprofit has paid in the past for a similar package of coverage.

- Should the board member’s firm be selected to provide coverage for the nonprofit? What possible risks should the nonprofit be prepared for?

Final Thoughts

- Recognize the existence of COIs

- Develop a practical method to surface and address them

- Remember to explain and train!

Sources

- www.cnn.com/2013/06/13/us/worst-charities


Thank You!

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Next Webinar

- September 4, 2013

- All That’s Sacred: The Erosion of Employment at Will, the Regular Workday and Other HR Icons