



AN ETHICS AND ACCOUNTABILITY CODE
FOR THE NONPROFIT SECTOR

Fundraising on Behalf of the Organization

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PREAMBLE

America's nonprofit sector serves the public interest and plays an essential role in our society and economy. Hard at work strengthening communities across the nation, nonprofits enrich our lives in a variety of ways by creating a broad array of benefits to society in fields such as charitable, religious, scientific, economic, health, cultural, civil rights, environment, and education.

Public investment and confidence drive the success of nonprofit organizations. Individuals, corporations, foundations, and federal, state, and local governments add value to the services that nonprofits provide by investing time, resources, and funds.

The Standards for Excellence Institute aims to raise the level of accountability, transparency, and effectiveness of all nonprofit organizations to foster excellence and inspire trust. The Standards for Excellence code (Standards, or code) provides a framework and step-by-step guidelines to achieve a well-managed and responsibly governed organization.

The code builds upon the legal foundations of nonprofit management, governance, and operations to embrace fundamental values such as honesty, integrity, fairness, respect, trust, compassion, responsibility, and transparency. The code consists of six Guiding Principles in 27 topic areas with specific performance benchmarks that characterize effective, ethical, and accountable organizations. The Institute helps the nonprofit sector operate in accordance with the Standards for Excellence code by providing educational resources, assistance, and a voluntary accreditation process.

The Standards for Excellence Institute encourages all nonprofit organizations to adopt the Guiding Principles of the Standards for Excellence code. By implementing the performance benchmarks in the code, nonprofit organizations will meet the highest ethical standards for effective service in the public interest.

STANDARDS FOR EXCELLENCE - GUIDING PRINCIPLES

I. MISSION, STRATEGY and EVALUATION

Guiding Principle: Nonprofits are founded for the public good and operate to accomplish a stated purpose through specific program activities. A nonprofit should have a well-defined mission, and its programs should effectively and efficiently work toward achieving that mission. Nonprofits have an obligation to ensure program effectiveness and to devote the resources of the organization to achieving its stated purpose.

II. LEADERSHIP: BOARD, STAFF, and VOLUNTEERS

Guiding Principle: Nonprofits depend upon effective leadership to successfully enact their missions and programs. Effective leadership consists of a partnership between the board and management, each of which plays an essential role. Understanding and negotiating these shared and complex elements of leadership is essential to the organization's success. A nonprofit's employees and volunteers are fundamental to its ability to achieve its mission.

Board members are in a position of trust to ensure that resources are used to carry out the mission of the organization. An organization's board leadership should consist of volunteers who are committed to the mission and who demonstrate an understanding of the community served. An effective nonprofit board should determine the mission of the organization, establish management policies and procedures, assure that adequate human and financial resources are available, and actively monitor the organization's allocation of resources to effectively and efficiently fulfill its mission.

Nonprofits should also have executive leadership which carries out the day-to-day operations of the organization, ensures financial and organizational sustainability, and provides adequate information to the board of directors. An organization's human resource policies should address both paid employees and volunteers and should be fair, establish clear expectations, and provide meaningful and effective performance evaluation.

III. LEGAL COMPLIANCE and ETHICS

Guiding Principle: Nonprofits enjoy the public's trust, and therefore must comply with a diverse array of legal and regulatory requirements. Organizations should conduct periodic reviews to address regulatory and fiduciary concerns. One of a leadership's fundamental responsibilities is to ensure that the organization governs and operates in an ethical and legal manner. Fostering exemplary conduct is one of the most effective means of developing internal and external trust as well as preventing misconduct. Moreover, to honor the trust that the public has given them, nonprofits have an obligation to go beyond legal requirements and embrace the highest ethical practices. Nonprofit board, staff, and volunteers must act in the best interest of the organization, rather than in furtherance of personal interests or the interests of third parties. A nonprofit should have policies in place, and should routinely and systematically implement those policies, to prevent actual, potential, or perceived conflicts of interest. Ethics and compliance reinforce each other.

IV. FINANCE AND OPERATIONS

Guiding Principle: Nonprofits should have sound financial and operational systems in place and should ensure that accurate records are kept. The organization's financial and nonfinancial resources must be used in furtherance of tax-exempt purposes. Organizations should conduct periodic reviews to address accuracy and transparency of financial and operational reporting, and safeguards to protect the integrity of the reporting systems.

V. RESOURCE DEVELOPMENT

Guiding Principle: The responsibility for resource development is shared by the board and staff. Nonprofit organizations depend on an array of sources of financial support. An organization's resource development program should be maintained on a foundation of truthfulness and responsible stewardship. Its resource development policies should be consistent with its mission, compatible with its organizational capacity, and respectful of the interests of donors, prospective donors, and others providing resources to the organization.

VI. PUBLIC AWARENESS, ENGAGEMENT, and ADVOCACY

Guiding Principle: Nonprofits should represent the interests of the people they serve through public education and public policy advocacy, as well as by encouraging board members, staff, volunteers, and stakeholders to participate in the public affairs of the community. When appropriate to advance the organization's mission, nonprofits should engage in promoting public participation in community affairs and elections. As such, they should communicate in an effective manner to educate, inform, and engage the public.

ABOUT THE STANDARDS FOR EXCELLENCE INSTITUTE

The Standards for Excellence Institute is a national initiative established to promote the highest standards of ethics and accountability in nonprofit governance, management and operations, and to facilitate adherence to those standards by all nonprofit organizations. The Institute uses as a vehicle the Standards for Excellence program, a system of nonprofit sector industry self-regulation originated by the Maryland Association of Nonprofit Organizations and currently replicated by licensed partners in Alabama, Central Virginia, Delaware, Eastern Tennessee, Ohio, Oklahoma, and Pennsylvania. The program is also being offered to chapters of The Arc nationwide through The Arc of the United States, to the American Nurses Association, and to Catholic nonprofit organizations nationwide through the National Leadership Roundtable on Church Management.

The centerpiece of the Institute's program is the Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector. The Institute also makes available to member organizations a comprehensive system of educational tools to enable individual nonprofit organizations to improve their governance and management practices. Standards for Excellence accreditation is available to individual organizations through a rigorous peer review process in selected locations and nationwide through the Standards for Excellence Institute.

For more information about joining the Standards for Excellence Institute or to obtain additional copies of the booklet or educational resource packets visit our website at www.standardsforexcellence.org.

FUNDRAISING ON BEHALF OF THE ORGANIZATION

As the *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* states:

Resource development personnel, including both employees and independent consultants, should not be compensated based on a percentage of the amount raised or other commission formula.

When using the services of a paid professional fundraising consultant, organizations should only use the services of professional solicitors and fundraising consultants who are properly registered with the appropriate state authorities.

Organizations should exercise control over any staff, volunteers, consultants, contractors, other organizations, or businesses that are known to be soliciting contributions on behalf of the organization.

Introduction

Many different types of entities and individuals solicit charitable contributions on behalf of nonprofit organizations. In some cases, nonprofits employ outside fundraising consultants, such as professional solicitors and fundraising counsels. In other cases, nonprofits engage volunteers from organizations that are separate entities from the nonprofit itself (such as: auxiliary groups affiliated with a nonprofit, civic, or community organizations, church youth groups, or concerned citizens organizing an event to honor a loved one). In still other cases, nonprofits may train and engage volunteers in their own fundraising campaigns and events.

No matter the group or the level of involvement by outside fundraisers, it is vital for nonprofits to control, monitor, and train those requesting contributions on the organization's behalf, unless, of course the individual is an independent contractor. In that instance, too much control over the methods the independent contractor utilizes can transform the relationship into one of employee/employer (see Special Note below). You have to be careful in striking a balance with outside fundraising counsel.

Special Note: Care should be taken to ensure that the fundraising consultant qualifies as an independent contractor as opposed to an employee of the organization as defined by the Internal Revenue Service (IRS). If you incorrectly classify an employee as an independent contractor, you can be held liable for employment taxes for that worker, plus a penalty. The IRS states "a general rule is that you, the payer, have the *right to control or direct only the result of the work* done by an independent contractor, and *not the means and methods of accomplishing the result.*"¹ Furthermore, a general rule for employees "is . . . anyone who performs services for you is your employee *if you can control what will be done and how it will be done.*" (IRS Publication 15-A).

Working with Fundraising Consultants

Organizations may choose to engage outside fundraisers for a variety of reasons: gaining expertise that current employees may not have; supplementing the efforts of existing staff; or providing a viewpoint that gives a fresh perspective. Other times, consultants are often hired because the employees of the organization do not have the time to complete a project or proposal in addition to their existing responsibilities.

The role of professional consultants in an organization will depend largely on the size of the organization and the development¹ experience of the staff. Individual consultants and consulting firms are hired to provide a variety of specialized services to an organization. Consultants can bring a level of wisdom, expertise, and creativity to a fundraising effort, and help an organization to raise funds, without serving as an employee. They are often an economical alternative for an organization as the fundraising consultant is often engaged without the nonprofit having to commit to a full time position (including payroll taxes, fringe benefits, etc.) and for a limited amount of time. Fundraising consultants can play many roles within an organization, including:

- Working on capital and special campaigns;
- Spearheading operating and annual campaigns;
- Coordinating planned giving campaigns;
- Planning or coordinating special events;
- Providing support services;
- Providing advice or consultation on fundraising issues;
- Assisting with institutional readiness prior to the start of a fundraising effort;
- Conducting research and identifying prospects;
- Grant writing;
- Actively guiding a fundraising campaign;
- Motivating and/or training the board or staff to solicit contributions; and
- Providing general fundraising expertise.

Consultants should work on a fixed-fee basis, based on an hourly rate or flat fee mutually-agreed upon by the fundraiser and the contracting organization.

When working with fundraising personnel and/or external fundraising consultants, nonprofit organizations must focus on several important fundraising issues. This *Standards for Excellence* educational resource packet covers the following issues related to fundraising personnel:

- Avoiding commission or formula-based compensation for fundraisers;
- Proper registration of fundraising consultants; and
- Exercising control over individuals and groups soliciting on behalf of your nonprofit organization.

¹ This package utilizes the term development and fundraising interchangeably.

Avoid Commission or Formula Based Compensation for Fundraisers

The *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* states that “resource development personnel, including both employees and independent consultants, should not be compensated based on a percentage of the amount raised or other commission formula.” The Association of Fundraising Professionals (AFP) also asserts that compensating fundraisers based on commissions or percentages is unethical. This professional association of fundraisers and development professionals stresses compensation based on a set fee. In addition to guarding against hiring fundraisers on a percentage basis, the association’s Code of Ethical Principles and Standards for Professional Practice also makes it clear that fundraisers should not pay, seek, or accept finder’s fees, (or) commissions.²

Commission-based compensation for fundraisers is considered unethical and inappropriate for many reasons, including:

- It is considered unprofessional or amateur – professionals are compensated for their time, amateurs are not;
- The practice encourages fundraisers to place pressure on donors for immediate needs, which can prove to be detrimental to the nonprofit organization and the fundraiser over the long-term;
- It may be viewed as privately benefiting fundraisers, rather than serving the public purposes of the nonprofit; and
- The practice may short-change the organization or the consultant.

Proper Registration of Fundraising Consultants

The *Standards for Excellence* states that nonprofits “should only use the services of fundraising professional solicitors and fundraising counsel who are properly registered with applicable regulatory authorities. Registration requirements vary from state-to-state. In some states, all individuals who serve as professional solicitors and/or fundraising counsel are required to register with the Attorney General or Secretary of State’s office. In other states, no registration requirements exist for fundraising consultants. Nonprofits are advised to check with their state’s charity regulatory body to learn more about registration requirements for professional solicitors and fundraising counsel. In addition, nonprofits must review the laws in all states where they engage in fundraising activities. Sample definitions³ for the terms professional solicitors and fundraising counsel are as follows:

✓ KEY TERM	Professional Solicitor Professional solicitors are those companies or individuals paid to solicit contributions for charitable organizations. A telemarketer is one example of a professional solicitor.
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²AFP does, however, condone “performance based compensation such as bonuses as in accordance with the organization’s overall program and provided that the bonus is not based on a percentage of philanthropic funds raised.”

³ Note: These terms and their definitions are samples only. Each state sets their own definitions and regulations for such fundraising consultants. Nonprofits should monitor the regulations in each state in which they raise funds to ensure compliance.

✓ KEY
TERM

Fundraising Counsel

Fundraising counsel are those companies or individuals who advise charitable organizations on the conduct of a charitable campaign. A fundraising consultant who is hired to develop a fundraising plan or a fundraising consultant who assists in writing solicitation letters are considered fundraising counsel.

Exercising Control over Individuals or Groups Soliciting on the Nonprofit's Behalf

The *Standards for Excellence* code states that “organizations should exercise control over any staff, volunteers, consultants, contractors, other organizations, or businesses that are known to be soliciting contributions on behalf of the organization.” Moreover, some state laws also require that nonprofits exercise control over all those conducting fundraising activities on the nonprofit's behalf.

Many nonprofits have gotten into trouble for allowing outsiders to use their names and logos in appeals for which the nonprofit did not exercise strict control. For instance, an outside group, while well meaning, may promise that charitable donations will be used in a way that is counter to the nonprofit's mission or may unknowingly assure a donor that a contribution will be used for a program or activity that is no longer offered by the nonprofit. Or, an outside group may accept contributions, issue receipts on its own behalf, and promise tax deductibility even if the group is not legally entitled to do so. In other cases, a well-meaning nonprofit volunteer may describe the programs and services of a nonprofit or the deductibility of an individual's contribution without having the correct information at their disposal.

Are grant writers considered fundraising counsel?

In some states, grant writers are considered fundraising counsel. In other states, grant writers are not.

To avoid these pitfalls, nonprofits should keep close tabs on all those raising money on their behalf. When working with your own organization's volunteers, Linda Lysakowski, author of *Recruiting and Raising Fundraising Volunteers*, cautions that volunteers “achieve better results when they understand the work of the nonprofit and are fully committed to the organization's mission.” She goes on to note that volunteers can be oriented in a similar way to how board members are oriented - employing the same sort of agenda, a facility tour, and stressing the organization's case for support.⁴ For some situations (i.e., where the nonprofit is allowing an outside group to use its logo and name in fundraising appeals), a formal fundraising agreement may be appropriate. In other cases, a very close working relationship involving approval of documentation at all stages and a less formal memorandum of understanding may be appropriate. A sample fundraising agreement is included in this packet.

⁴ Lysakowski, Linda. *Recruiting and Training Fundraising Volunteers*. Hoboken, NJ: John Wiley and Sons, 2005.

Selected Resources for Employment of Fundraising Personnel

Books and Articles

Ciconte, Barbara L. and Jacob, Jeanne G. *Fundraising Basics: A Complete Guide, Second Edition*. Gaithersburg, Maryland: Aspen Publishers, 2001. See Chapter 17 Working with Consultants: Hiring and Using Consultants in Your Fundraising Programs.

Developing Office Management: Forms, Checklists & Guidelines. Gaithersburg, Maryland: Aspen Publication, 2006.

Dove, Kent. *Conducting A Successful Fundraising Program: A Comprehensive Guide and Resource*. San Francisco: Jossey-Bass, 2001.

Lindahl, Wesley. *Principles of Fundraising: Theory and Practice*. Sudbury, Massachusetts: Jones and Barlett Publishers, 2011.

Lysakowski, Linda. *Recruiting and Training Fundraising Volunteers*. Hoboken, NJ: John Wiley and Sons, 2005.

Reid, Jim. "Selecting and Working with Fund Raising Consultants." *Achieving Excellence in Fundraising Second Edition*, Hank A. Rosso and Associates and Eugene R. Tempel, editor. San Francisco: John Wiley and Sons, 2003.

Websites

Association of Fundraising Professionals. www.afpnet.org.

The Giving Institute www.thegivinginstitute.org

Internal Revenue Service. www.irs.gov (See Independent Contractors vs. Employees)

National Council of Nonprofits. www.councilofnonprofits.org (See Fundraising Topic on Professional Fundraising Consultants and Grantwriters)
<http://www.councilofnonprofits.org/resources/resources-topic/fundraising/professional-fundraising-consultants-and-grant-writers>

Attachment:

- Attachment A: *Sample Fundraising Agreement* for Outside Organizations Raising Money without charge on Behalf of ABC Nonprofit Organization, 2000-2014.

Attachment A
Sample Fundraising Agreement
for Outside Organizations Raising Money without charge on Behalf of
ABC Organization⁵
Standards for Excellence Institute

This Agreement is between ABC Organization, a charitable and not-for-profit corporation and _____ (hereafter referred to as “Partner”) for the purpose of _____ designed with the intent of raising funds for ABC Organization.

1. The term of this Agreement will be from the date it is signed by both parties until _____ {period may not exceed one year}. The parties may mutually agree in writing to extend the term of the Agreement.

2. ABC Organization must review and approve all promotion materials, including, but not limited to advertising, letters, emails, and solicitations of any sort, and press releases, that use the name and/or emblem of the ABC, prior to production, printing and publication. Such approval will not be unreasonably withheld. ABC Organization must be allowed reasonable turn-around time for such approval. All uses of the ABC Organization’s name and emblem must be consistent with the Corporate Identity Standards of the ABC Organization. All promotional materials must include a disclaimer that reads as follows: “The ABC Organization’s name and emblem are used with its permission, which in no way constitutes an endorsement, express or implied, of this _____.” All promotion materials must fully and truthfully state the percentage of net proceeds that will be contributed to ABC Organization and/or the portion of the product price or the fixed amount per sale/transaction that is to benefit ABC, and, if applicable, the maximum amount that ABC Organization will receive. All promotion materials will specify the full name of ABC Organization and an address or phone number to contact for additional information about the charity, and the term of the campaign.

After approval has been granted, both ABC Organization and _____ will certify in writing the final text of all materials to be used in the promotion. Such verification will state as follows: “We, (names and titles of representatives of ABC Organization and _____), hereby certify that the attached advertising or promotional copy represents the final, agreed to language to be used in the promotion.”

3. Potential corporate sponsors of the promotion need to be approved in advance by ABC Organization. ABC will not accept individuals as sponsors. Sponsorship will not imply any product endorsement. A disclaimer must be made in all of the promotion materials

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of any product endorsement by ABC. Such a disclaimer will read as follows: “ABC Organization’s name and emblem are used with its permission which in no way constitutes an endorsement, express or implied, of this Product.” All promotion materials approved for public distribution will fully and truthfully state any terms of this sponsorship which may provide support to ABC under the terms of this Agreement.

4. ABC will receive ____ percent of the new proceeds or fixed dollar amount per sale (defined as gross proceeds minus the cost of manufacturing and promoting the service and/or product) generated by this promotion.

5. ABC will incur no financial liability for this promotion. All financial liabilities will be assumed by the Partner. Neither ABC, including its chapters, nor its directors, officers, employees and volunteers will be liable for any injury to, or death of, any participant, customer, Partner, or individual employed in connection with the promotion, whether located at _____ {fill in location or venue of event, if any}, the surrounding grounds, buildings, and facilities or at any place where the promotion will be conducted, filmed or televised. Neither ABC nor its directors, officers, employees and volunteers will be liable for any property damage which may occur as a result of the promotion. Partner will indemnify and hold harmless ABC for any injury caused by Partner’s acts or omissions. Partner will maintain general liability and/or event insurance sufficient to protect ABC against any liability in the event of harm caused through Partner’s acts or omissions.

6. The Partner agrees that it will comply with all state and /or municipal charitable solicitation statutes and/or ordinances which affect or apply to the promotion.

7. ABC reserves the right at its discretion to terminate this Agreement at any time if it determines that such termination is in its best interests by giving ten days written notice to the Partner. Any default in, or breach of, the terms and conditions of this Agreement by the Partner will result in its immediate termination, upon written notification to that effect from ABC to the Partner.

8. This Agreement, and any of the obligations and responsibilities hereunder, may not be assigned or subcontracted by the Partner without the prior written consent of ABC.

9. This Agreement constitutes the sole agreement between the parties hereto and no amendment, modification, or waiver of any of the terms and conditions hereof shall be valid unless in writing.

Signed:

Partner

ABC Organization

Date

Date

This agreement is not intended to apply to a certain nonprofit or offer legal advice specific to your organization. Such legal advice or opinions can only be rendered when related to distinct fact situations. Rather, this agreement is designed to be used as a resource to provide you with ideas, suggestions, and guidelines, which may be valuable to your organization as a starting point for your own agreement.

Carefully review every word in the agreement you are interested in adopting and mold the language to your situation and organizational needs. Finally, before publishing an agreement, it is always wise to consult an attorney in your state who is versed in nonprofit law to conduct a thorough review of the agreement.