

Legal Compliance Checklist for Staffed Private Foundations

Version 1.1 (Nov. 2006)



This checklist can help you ensure that your foundation is complying with key federal and state laws and regulations covering private foundations (family, independent or corporate). This checklist is for private foundations with one or more full-time or part-time staff people. If your foundation is not staffed, please use the legal compliance checklist for unstaffed private foundations.

Governance

Board Fiduciary Duties	Yes	No	NA
1. We have a designated board of directors or trustees that is responsible for governing the foundation's affairs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. We have taken steps to ensure that our board members are aware of, fully understand and fulfill their fiduciary duty of care , devoting the time, attention and resources necessary to understand and prudently oversee the foundation's affairs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. We have taken steps to ensure that our board members are aware of, fully understand and fulfill their fiduciary duty of loyalty , setting aside personal or conflicting interests and acting solely in the best interest of the foundation when making a decision or acting on behalf of the foundation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. We have taken steps to ensure that our board members are aware of, fully understand and fulfill their fiduciary duty of obedience , obeying all state and federal laws pertaining to foundations and acting in furtherance of the foundation's charitable purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Board members work to protect, preserve, invest and manage the foundation's assets consistent with donor intent and restrictions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Board members investigate any warnings or reports of officer or employee theft or mismanagement and report misconduct to the appropriate authorities, consulting an attorney or other professional for assistance as appropriate.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. We have policies and procedures in place to protect the confidentiality and privacy rights of people connected to the organization (grantees, grant applicants, employees, volunteers and others), consistent with applicable law and our fiduciary duties.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Board members are elected as outlined in our charter or bylaws, as applicable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Our board size complies with state law and our articles of incorporation and bylaws, as applicable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Foundation Self-Dealing	Yes	No	NA
1. Our board and managers have identified and know who our disqualified persons are.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Our board carefully evaluates every transaction between the foundation and a disqualified person.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	NA
<p>3. We do not engage in any self-dealing transactions between the foundation and any disqualified persons, including the following:</p> <p><input type="checkbox"/> Do not sell, exchange or lease property between the foundation and a disqualified person, including paying any kind of rent to a disqualified person.</p> <p><input type="checkbox"/> Do not lend money or extend credit to a disqualified person.</p> <p><input type="checkbox"/> Do not transfer foundation assets or income to, or for the use or benefit of, a disqualified person.</p> <p><input type="checkbox"/> Do not reimburse the personal expenses (as opposed to foundation-related business expenses) of a disqualified person.</p> <p><input type="checkbox"/> Do not transfer or furnish goods, services or facilities between a disqualified person and the foundation for a fee.</p> <p><input type="checkbox"/> Do not satisfy a disqualified person’s personal obligations to others, including personal charitable pledges.</p> <p><input type="checkbox"/> Do not pay money or give property to government officials.</p> <p><input type="checkbox"/> Do not purchase tickets to a charitable fundraising event and provide them to any disqualified person (unless attendance is part of a grantee evaluation or review).</p> <p><input type="checkbox"/> Do not pay excessive compensation to a disqualified person for performing necessary and recognized personal services for the foundation (legal, accounting, investment, executive staff services). We rely on comparable data to determine a reasonable compensation level, and adequately document its determination.</p> <p><input type="checkbox"/> Do not pay for the travel expenses incurred by the spouse or children of a foundation employee or board member (unless they are also a foundation manager or employee or independently perform necessary and recognized personal services for the foundation).</p> <p><input type="checkbox"/> No disqualified persons use a foundation credit card for personal expenses, even if they later reimburse the foundation for the expenses.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. If we are a corporate foundation, the foundation has not paid the parent company directly for any resources (office space, equipment, supplies, personnel, etc.) other than for reasonable expenses for personal services (legal, accounting, investment, executive staff services).</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Board Compensation

	Yes	No	NA
<p>1. If we have a policy to compensate board members for board service, we have taken steps to ensure that the compensation is reasonable and not excessive by relying on comparable data prior to making a determination of compensation; adequately documenting the basis for the board’s determination; and ensuring that the compensation is based on the functions or services required and actually performed by board members, the level of skill and experience necessary for them to fulfill their duties, and the amount of time they spend in fulfilling their duties.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Conflicts of Interest

Yes No NA

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|---|--------------------------|--------------------------|--------------------------|
| 1. We have a written conflict of interest policy to address when our foundation engages in any contracts or transaction that are not self-dealing between a board member, a family member of a board member, or an organization in which the board member has a material financial interest. ¹ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. We require every staff and board member to annually complete and submit a conflict of interest disclosure form, in which they acknowledge they have received, read, understood and agreed to comply with the policy and they disclose any actual or potential conflicts of interest in making a particular grant, investment, contract, payment or other applicable transaction. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

¹ The law does not require a private foundation to have a conflict of interest policy, but it would be difficult to achieve or demonstrate compliance with many provisions of tax law without having such a policy in place. As an indication of the growing importance of having a conflict of interest policy, the IRS has revised its application form for tax-exempt status (Form 1023) to specifically ask whether an applicant has adopted a conflict of interest policy.

Communications/Disclosure

990-PF & Other Filings

Yes No NA

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| 1. We file our 990-PF by the legal deadline. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. On our 990-PF, we provide information on our grantmaking guidelines and application process. If we do not accept unsolicited grant proposals, we indicate this on the form. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. On our 990-PF, we provide a complete list of grants paid and approved, with a grant description. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. On our 990-PF, we provide a complete and accurate list of all officers, board members and foundation managers, with a complete description of each person's compensation and time devoted to the position. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. We have retained and make available for public inspection, without charge, a copy of our original and amended 990-PF and any 990-Ts for the last three years and of our exemption application and related documents (unless we filed our exemption application before July 15, 1987, and did not have a copy of the application on that date). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. We provide copies of our 990-PF, any 990-Ts and exemption application to anyone who requests them either in person (on a same-day basis) or in writing (within 30 days of the request) OR we make our 990-PF and exemption application available free on the Web as exact images of the originals. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. We annually submit a copy of our 990-PF and the appropriate fee, if any, to our state Attorney General's Office or other charity regulator, if required in our state. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Registration

If we are a newly formed foundation:

	Yes	No	NA
1. We have filed Form 1023 for recognition by the IRS as a tax-exempt organization.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. We have filed articles of incorporation with the appropriate fee with the Secretary of State or other appropriate state office.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. We have applied for state tax exemption, if it is required in our state.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. We have filed any additional registration forms that our state may require for nonprofit corporations or charitable trusts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Grantmaking

Grantmaking Process

	Yes	No	NA
1. We engage in proper due diligence to ensure that all grants we make are used to further our foundation's exempt purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. For any grants we make to organizations that are not charities (including social welfare organizations, trade associations, for-profit corporations), we take the appropriate legal steps to exercise expenditure responsibility.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. For any grants we make to other private foundations, we take the appropriate legal steps to exercise expenditure responsibility and we take steps to ensure that the grantee expends the grant funds within 12 months after the close of the taxable year in which it received the funds (to comply with the "out of corpus" rule).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. For any grants we make directly to charities outside the U.S., we take the appropriate legal steps to either exercise appropriate expenditure responsibility or to conclude that the grantee is the equivalent of a U.S. public charity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. We take the appropriate legal steps to ensure that our grants do not fund any organizations that will use the money for terrorism.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. We ensure that any grants we make to a fiscal sponsor are not earmarked and that the fiscal sponsor has total control over how the funds are granted.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. For any grants we make to individuals, we take the following steps: <ul style="list-style-type: none"> • Ensure the grant would be used for a charitable purpose. • Exercise appropriate due diligence. • Follow IRS recordkeeping requirements for grants to individuals. • Do not make any grants to disqualified persons. • Make the grant using a procedure approved in advance by the IRS (for any grants for study or travel purposes, such as scholarships, fellowships or research grants). 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. If we are a corporate foundation, we do not make any <i>quid pro quo</i> grants that aim to generate company business (e.g., considering a grantee's past use of company products or services when making grant decisions; using grants to pay for advertising of company products or services).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	NA
9. If we make any grants to Type III supporting organizations that are not functionally integrated, we exercise appropriate expenditure responsibility for these grants.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. If we make grants to any type of supporting organization where a disqualified person of our foundation controls the supporting organization or one of its supported organizations, we exercise appropriate expenditure responsibility for these grants.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Finance

Investments	Yes	No	NA
1. Our board members make prudent investment decisions based on diversification of assets, appropriate performance benchmarks, and the importance of a portfolio's total return on investment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Our board members avoid any jeopardizing investments that are excessively risky or speculative.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Our board members receive necessary information on the foundation's investment results, strategy and decisions in order to fulfill their legal and fiduciary responsibilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. The foundation and disqualified persons together do not own a share of the voting stock of any corporation or partnership that exceeds the limits described in Section 4943 of the Internal Revenue Code.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Taxes	Yes	No	NA
1. We pay an annual excise tax of 1% or 2% of our net investment income and make quarterly filings per IRS requirements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. We pay tax on unrelated business taxable income (UBIT) for any business outside our charitable purpose, and make an annual filing of 990-T and quarterly filings per IRS requirements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Expenditures	Yes	No	NA
1. If we make grants to Type III supporting organizations, we do not count these grants toward our payout requirement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. If we make grants to any type of supporting organization where a disqualified person of our foundation controls the supporting organization or one of its supported organizations, we do not count these grants toward our payout requirement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Administration

Records Retention & Management

Yes No NA

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| 1. We have a written, mandatory record retention and destruction policy. ² | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. For any grants we make to an individual for travel, study or similar purposes, we retain the following information on these grants for four years after completion of the use of funds: <ul style="list-style-type: none"> • All information we secured to evaluate the qualifications of potential grantees. • Identification of grantees (including whether grantee is a disqualified person). • Specification of the amount and purpose of each grant. • Follow-up information that we obtained in complying with these record retention requirements. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

² The law does not require a private foundation to have a record retention and destruction policy, but having such a policy is becoming increasingly critical to protect a foundation from legal liability. Although provisions of the Sarbanes-Oxley Act of 2002 apply only to public companies, the Act has made it easier for the government to prosecute cases where individuals and organizations (including charitable institutions and their managers) have obstructed justice by destroying documents. And there are growing calls from federal and state regulators to mandate Sarbanes-Oxley-type reforms for charities.

Personnel

Staff Compensation

Yes No NA

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| 1. We have taken steps to ensure that any compensation we pay to high-level employees is reasonable and not excessive, including the following: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. We rely on comparable data prior to making a determination of compensation for high-level employees. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Compensation arrangements for high-level employees are approved in advance by the board, exclusive of any individuals who have a conflict of interest with respect to the arrangement. At a minimum, family members recuse themselves from discussions and decisions about their own compensation, and this is noted in meeting minutes. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. We adequately document the basis for the board’s determination of compensation for high-level employees. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Whistle-Blower Protection

Yes No NA

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| 1. We developed, adopted, disclose and follow a “whistle-blower” protection policy to encourage employees and volunteers to come forward as soon as possible with credible information on suspected illegal financial, auditing or governance practices; violations of adopted policies; or any other unethical or inappropriate conduct of board or staff members. The policy includes a formal, confidential and anonymous process to deal with complaints and prevent retaliation. ³ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
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³ The law does not require a private foundation to have a “whistle-blower” protection policy, but having such a policy is becoming increasingly critical to protect a foundation from legal liability. Although provisions of the Sarbanes-Oxley Act of 2002 apply only to public companies, the Act has made it easier for the government to prosecute cases where individuals and organizations (including charitable institutions and their managers) have obstructed justice by retaliating against whistle blowers. And there are growing calls from federal and state regulators to mandate Sarbanes-Oxley-type reforms for charities.

	Yes	No	NA
2. We investigate any and all employee and volunteer complaints of suspected misconduct or malfeasance, and correct any problems or explain why corrections were not necessary. Any action taken to correct or address the complaint is documented and entered into the foundation’s permanent records.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Employment Laws & Regulations

	Yes	No	NA
1. We comply with all applicable federal, state and local laws regarding equal employment opportunities for all persons regardless of disability, race, color, religion, gender, age, national origin, marital status or sexual orientation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. We comply with all filing deadlines and laws for making FICA (Social Security and Medicare) payments and for withholding federal, state and local income, employment and other taxes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. We provide worker’s compensation coverage pursuant to state law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. We keep an accurate record of time worked by employees in order to calculate pay and benefits.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. We appropriately classify all employees as exempt or non-exempt, and non-exempt employees receive appropriate overtime compensation as required by federal law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. We provide a safe and healthy work environment as required by federal and state law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. If we have 50 or more employees, we comply with all provisions of the Family and Medical Leave Act.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Public Policy

Funding Advocacy & Lobbying

	Yes	No	NA
1. We do not engage in direct lobbying, or the funding of such lobbying, unless it is for one or more of the following activities: <ul style="list-style-type: none"> • Fund or present nonpartisan analysis, study or research that was made widely available. • Engage in examinations and discussions of broad social, economic and similar problems not connected to specific legislative proposals. • Provide testimony or other technical assistance to governmental body or committee, pursuant to a written request from the governmental body or committee. • Address proposed legislation that would affect the existence of our foundation, its powers and duties, its tax-exempt status, or the deductibility of contributions to the foundation. • Fund a public charity’s membership communications that contain legislative information but no legislative call to action (if the charity elected to be governed by IRC Section 501(h)). • Present information to a legislative body about a program that is, or may be, funded by both the foundation and the government. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	NA
2. We do not provide public charities with any grants that are earmarked to be used for lobbying.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. We do not make any grants to support voter education or voter registration activities that are overtly or implicitly partisan in the persons targeted or the messages conveyed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If we fund nonpartisan voter registration activities, we follow all procedures required by the IRS in Section 4945(f).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. We do not make grants for any project involving lobbying activity in which our total grants for that project during the year exceed the project's budgeted non-lobbying expenses.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Political Campaign Involvement

	Yes	No	NA
1. We do not to make any campaign contributions to, or any expenditures on behalf of, candidates for public office.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. We do not endorse any candidates for public office on behalf of the foundation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. We do not communicate anything on behalf of the foundation that explicitly or implicitly favors any candidates for public office.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Our board and staff do not use foundation facilities, equipment, personnel or other resources to provide support to, or oppose, a candidate for public office or a political campaign.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Employing Lobbyists

If we employ a lobbyist:

	Yes	No	NA
1. We register and file semiannual reports with the Secretary of the U.S. Senate and the Clerk of the U.S. House of Representatives, if we expected to incur, or did incur, in-house lobbying expenses at the federal level exceeding \$24,500 in a semiannual period.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. We file any reports that may be required by state law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Questions?

For questions about this checklist, please contact the Forum of Regional Associations of Grantmakers at 202.467.1120 or info@givingforum.org.

Legal Disclaimer

None of the information in checklist should be construed as offering legal advice. The specific advice of legal counsel is recommended before acting on any matter covered in this checklist.