The governing board of a nonprofit organization holds ultimate responsibility for ensuring that the organization serves its mission and for the overall welfare of the organization itself. In addition, as we discussed in Chapter 3, the board plays a critical boundary-spanning role in the open system of a nonprofit organization, connecting the nonprofit to its community and constituencies, often including important sources of financial support. Understanding the board's responsibilities and role and knowing how to work with the board is an essential skill of effective nonprofit managers, especially chief executive officers (CEOs). This chapter will discuss the nature and responsibilities of governing boards, some characteristics of effective boards, and some challenges faced by nonprofit boards today. It also will consider the important question of the relationship between the board and the organization's CEO. Before we get started, it is important to clarify some terminology.

The boards we are concerned with here are those that have a legal responsibility for governing their organizations—they are governing boards. Nonprofit organizations may have various groups that are called boards but that do not have such responsibilities, for example, advisory groups that may contribute their expertise to the organization and help raise funds but that do not hold any legal authority for its governance. Some advocate that such groups be called councils rather than boards, to keep that distinction clear (Worth, 2017a). We will discuss advisory councils later in this chapter, but it is important to recognize that while such groups may play an important role in the organization, they are not governing boards and they are therefore not a principal focus of this chapter.

Nonprofit organizations may use different terms to identify their governing boards. Most nonprofits are chartered as corporations, and members of the governing board are directors of the corporation under the law. Thus, many organizations use the term board of directors to identify them. Educational, cultural, and medical institutions often use the term board of trustees. Other organizations may use the terms board of governors, governing council, or something else to describe their governing boards. This book generally

Learning Objectives

After reading this chapter, students should be able to:

1. Describe various types of boards.
2. Explain the advantages and disadvantages of various types of boards.
3. Explain the governing board's legal and functional responsibilities.
4. Summarize prominent models of the board–CEO relationship.
5. Summarize theories regarding board behavior.
6. Explain the roles of the board chair, governance committee, and board professionals.
7. Identify board best practices.
8. Analyze cases, applying concepts from the chapter.
uses the generic term, governing board, except when discussing the board of a specific organization, in which case it maintains the name that organization uses.

In many cases, the person who heads the board is called the president of the organization, and the paid staff person who manages the organization is called the director or executive director. Some nonprofits—especially universities, hospitals, and major arts and cultural institutions—have adopted corporate terminology, calling the head of the board the chair and the paid executive the president. Others have adopted another corporate term, chief executive officer, or just CEO, to identify the top paid staff person. This chapter refers to the top board officer as the chair and the paid executive of the organization as the CEO.

One more point before we begin our discussion: The previous two chapters have drawn primarily from the academic literature, but this chapter relies significantly on the practitioner literature as well. Although the body of academic research on nonprofit boards is substantial, an influential literature on the topic has been developed by practicing nonprofit managers and consultants who work with boards and CEOs. Most of it describes what boards do or prescribes practices that boards should follow. Thus, this chapter draws on both academic and practitioner literature, including the work of some authors who are academics but also provide applied advice to boards.

Types of Governing Boards

Nonprofit governing boards are not all the same. For one thing, they differ in the way their members are selected. This may have important implications for how they operate and what agendas, priorities, and pressures members may bring to their work on the board. Different types of boards also may interact differently with the organization’s CEO. For anyone working in a nonprofit organization, especially as a CEO or other senior executive, understanding how individuals come to be sitting at the governing board table is essential to understanding and working successfully with the board. Working successfully with the board is not only critical to the executive’s effectiveness, it is also essential to his or her success, since in most cases the CEO is appointed by and is evaluated by the board. Table 4.1 summarizes types of boards and some of the advantages and disadvantages of each, which are discussed in the following paragraphs.

Elected Boards

Some boards are elected by the membership of the organization. This is common in memberserving and advocacy organizations. The methods used to elect the governing board vary; for example, some elections are conducted by mail or online and others are conducted at an annual meeting. Depending on the political and cultural environment within the organization, elections may be contested, and some individuals may, in effect, campaign for seats on the board. In other cases, a nominating committee of the existing board presents recommended candidates, who are often approved in a pro forma vote (that is, as a formality) by the membership.

Having an elected board may result in uncertainty about who will govern the organization from one year to the next—the outcome of elections is not always assured, and this may present a challenge to the CEO. What the board expects of the CEO may change; alliances and factions on the board may develop and shift; and the board’s values and priorities may be dynamic, as political and philosophical crosscurrents among the membership find their way into the boardroom. The controversy that surrounded the election of the Sierra Club’s board in 2004 provides an interesting illustration.
In 2004, anyone could join the Sierra Club with a $25 dues payment, and all members were eligible to vote in the election of the board. (That was an unusually low threshold for voting eligibility. Many organizations limit those eligible to vote to members who have been active for a certain period of time.) The Sierra Club’s board included 15 members, and five seats were open for election that year. Individuals who were strong advocates for more restrictive U.S. immigration began to organize and encourage people sympathetic to their views to join the Sierra Club. Their goal was to have their sympathizers elect new board members who would change the club’s position on the immigration issue. Within three months, 30,000 people became new members of the Sierra Club, compared with only 22,000 the previous year. Some of these new members had been organized by the anti-immigration candidates who were seeking election to the board. The election was contentious. Some described the outsiders’ efforts as a “hostile takeover” and accused them of pursuing “the greening of hate.” Others portrayed their efforts as addressing needed reform in the club’s operation and claimed that their election would increase the club’s effectiveness (Greene, 2004).

The insurgents did not prevail, but the Sierra Club case illustrates the potentially tumultuous environment that may be created when governing boards are elected by an organization’s membership. To be the CEO of such an organization requires a high tolerance for discussion, debate, and uncertainty. In addition, the membership terms of an elected board tend to be relatively brief, and turnover on the board may make it difficult to sustain focus on long-range goals and plans. Skills of board members may be uneven, since personal popularity or positions on issues may influence election.

Table 4.1  Types of Boards

<table>
<thead>
<tr>
<th>Type of Board</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elected governing boards</td>
<td>Help ensure that the organization and the CEO will be responsive to members’ needs and priorities</td>
<td>Division among the membership may create disagreement on the board. Turnover on the board may make it difficult to sustain focus on long-term goals and plans. Skills of board members may be uneven, since personal popularity or positions on issues may influence election.</td>
</tr>
<tr>
<td>Self-perpetuating governing boards</td>
<td>Can maintain continuity of culture, priorities, goals Can craft the board membership to gain needed skills Can select members who are helpful in fundraising</td>
<td>May become unrepresentative of the community or constituency May become too stable to respond to changes in the environment May become too passive and yield too much authority to the CEO</td>
</tr>
<tr>
<td>Hybrid governing boards (often including appointed, self-perpetuating, ex officio)</td>
<td>May combine the responsiveness of elected boards, the stability of self-perpetuating boards, and accountability to an appointing authority—for example, a sponsoring church</td>
<td>Different interests and loyalties of board members may lead to a stalemate. Ex-officio members may not be fully committed to the organization.</td>
</tr>
<tr>
<td>Advisory councils</td>
<td>May be a vehicle for gaining expert advice on technical matters and/or for engaging more people as advocates and donors</td>
<td>If roles and responsibilities are not clearly defined and understood, may intrude on areas in which only the governing board has authority.</td>
</tr>
</tbody>
</table>

In 2004, anyone could join the Sierra Club with a $25 dues payment, and all members were eligible to vote in the election of the board. (That was an unusually low threshold for voting eligibility. Many organizations limit those eligible to vote to members who have been active for a certain period of time.) The Sierra Club’s board included 15 members, and five seats were open for election that year. Individuals who were strong advocates for more restrictive U.S. immigration began to organize and encourage people sympathetic to their views to join the Sierra Club. Their goal was to have their sympathizers elect new board members who would change the club’s position on the immigration issue. Within three months, 30,000 people became new members of the Sierra Club, compared with only 22,000 the previous year. Some of these new members had been organized by the anti-immigration candidates who were seeking election to the board. The election was contentious. Some described the outsiders’ efforts as a “hostile takeover” and accused them of pursuing “the greening of hate.” Others portrayed their efforts as addressing needed reform in the club’s operation and claimed that their election would increase the club’s effectiveness (Greene, 2004).

The insurgents did not prevail, but the Sierra Club case illustrates the potentially tumultuous environment that may be created when governing boards are elected by an organization’s membership. To be the CEO of such an organization requires a high tolerance for discussion, debate, and uncertainty. In addition, the membership terms of an elected board tend to be relatively brief, and turnover on the board may make it difficult to sustain its focus on long-range goals and plans. Doing so requires considerable repetition of presentations and discussions, to maintain consensus among the changing membership of the board. It may
be difficult to motivate members of an elected board to make gifts or engage in fundraising, since the ability and inclination to do so have not been criteria in their selection. The skills of board members may be uneven, since their personal popularity or their positions on certain issues may have been considerations in their election. However, elections do help ensure that the board will be representative of the constituency the organization serves and that the organization and its executive will be responsive to members’ views and priorities. Elected boards are less likely than the next type, self-perpetuating boards, to become stale, uninvolved, or homogeneous in their membership.

Self-Perpetuating Boards

Most charitable nonprofits have self-perpetuating boards. New members of a self-perpetuating board are selected by the existing members of the board, who identify and enlist individuals according to criteria established by the board itself. When a new nonprofit organization receives a charter, it must identify the original, founding members of the governing board; many states mandate a minimum of three (Blackwood, Dietz, & Pollack, 2014). Those individuals then have the authority to develop bylaws, which specify the total number of members of the board. The original board members then may select others to join them, up to the maximum permitted under the bylaws (which, of course, the board retains the authority to change). As individuals leave the board or complete their terms of service, the remaining members select others to take their seats, and this cycle continues as long as the organization exists.

In contrast to a board elected by the membership, a self-perpetuating board creates a relatively stable situation for the organization and its CEO. Although the bylaws of many boards do limit the number of terms that members may serve, self-perpetuating boards tend to have longer terms than elected boards, and the board’s membership changes more slowly. Thus, the board’s policies and culture may reflect continuity, reinforced by the tendency of its members to select successors who generally share their values and views. Indeed, in some cases, strong or long-serving CEOs may gain significant influence in the selection of board members, in effect choosing their own bosses.

One advantage is that a self-perpetuating board can craft its own membership, selecting individuals specifically to bring needed skills or augment its strength in areas important to its work. Many boards maintain an inventory of the expertise and connections represented among their members and make a systematic effort to identify and recruit new members to fill any identifiable gaps. For example, if someone with financial expertise is needed, the board can seek out such an individual and recruit him or her to join the board in order to add those skills. A social service organization may try to find someone with professional social work experience who can help the board evaluate program recommendations from its staff. If the organization desires to increase the amount of support it receives from corporations, the board can identify and recruit corporate executives who may be helpful in that regard.

But these advantages of the self-perpetuating board are accompanied by some potential weaknesses as well. One is that the board may come to be unrepresentative of the constituency or community the organization serves. If the existing members of the board do not recognize the importance of diversity, they may continue to select new members who are just like them, drawing on their own business and social circles to fill board openings. Over time, the organization could become out of touch and be unable to adapt sufficiently to changes in its environment. Another risk is that a self-perpetuating board may become too stable in its membership and too complacent. There have been cases in which self-perpetuating boards, without the scrutiny that comes from the broader constituency of the organization, have been too lax in their oversight of their CEOs or even the behavior of their fellow board members, with disastrous results for the organization.
Appointed and Hybrid Boards

A third way in which board members may be selected is through appointment by some authority outside the organization. This is the typical model for public organizations; for example, the boards of state universities are usually appointed by the governor of the state. Few nonprofits have totally appointed boards, but some do have a number of appointed members. This is sometimes the case in nonprofit organizations that are affiliated with a religious congregation, which may have board members appointed by a church authority. Colleges and universities may have board members appointed by an alumni association. Organizations that work closely with government may have some board seats held by individuals who are appointed by a governmental authority. Boards also may have some seats that are held \textit{ex officio}—that is, designated to be held by the individual who holds a certain office or position. For example, the vice president of the United States and the chief justice of the Supreme Court serve as ex-officio members on the Board of Regents of the Smithsonian Institution. An organization's CEO often holds a seat on the board in an ex officio capacity, which may come with or without a vote.

Other boards are hybrids, perhaps with some members being elected, some appointed, some self-perpetuating, and some serving \textit{ex officio}. For example, a nonprofit that provides health services to underserved populations and that meets certain other requirements may become a Federally Qualified Health Center. That status brings certain benefits, including eligibility for enhanced reimbursements from Medicaid and Medicare for the medical care the organization provides. But this status also has an impact on the organization’s governing board, since the law requires that a majority of board members be active, registered users of the health center and representative of the population served. Other members may be selected through another process and on the basis of other criteria, but the requirement regarding a majority of clients establishes a hybrid board and reduces flexibility in composing the board’s overall membership (Rural Assistance Center, 2014).

Hybrid boards may represent the best of both worlds, encompassing an elected component that helps keep the organization responsive to its constituencies; a self-perpetuating component that provides stability, continuity, and perhaps financial support; and an appointed component that ensures the organization’s accountability to a parent organization or government. However, hybrid boards also can present challenges. For example, if elected, appointed, and self-perpetuating members hold different views or agendas, stalemate may result. Ex officio members may not always feel a real commitment to the organization and its mission, having just landed on the board by virtue of some other position they hold. If this is the case, they may not fully participate in the work of the board or develop a full understanding of the organization and its work.

Advisory Councils

As mentioned earlier in this chapter, many nonprofit organizations and institutions have a variety of groups that may be called boards or councils but that do not have legal responsibility or authority for governance of the organization. In this book, we call such groups \textit{advisory councils}.

There are various reasons why a nonprofit organization may create advisory councils, and the membership of a council will reflect its purpose. For example, it may be desirable to create a group of experts who can provide substantive advice on the organization’s programs. A nonprofit providing human or social services may benefit from an advisory council of experts in the field, who can offer professional guidance and help to evaluate programs. Some may have advisory councils that include current or former clients, who provide feedback on the effectiveness of programs from that perspective. Professional schools in universities often have advisory councils that provide the dean and faculty of the school with advice.
regarding what skills are most needed by employers of their graduates, helping to shape the curriculum.

In other cases, advisory councils are established, at least in part, as a strategy for engaging more people who may become advocates or donors and who may assist in fundraising. Members of such a council augment the fundraising support that the governing board can provide. Sometimes, advisory councils also serve as a vehicle for engaging individuals who may eventually serve on the governing board, providing them with an opportunity to learn more about the organization and become better known to members of the governing board before they are invited to join it. Some individuals may prefer to serve on an advisory council rather than the governing board, desiring to make a contribution to the organization without assuming the formal responsibilities that come with service on a board of directors or board of trustees. Advisory councils also may be valuable as a sounding board for the CEO. Since the CEO does not report to the council and the council has no authority to formally evaluate the CEO, they may provide an opportunity to test new ideas and engage in brainstorming in an open manner before the CEO brings proposals directly to the governing board.

Some advisory councils may be formally established in an organization’s bylaws, but others are informal, really just a group of individuals assembled by the CEO (or some other manager, for example, the director of a program or center) to bounce ideas and gain help with fundraising. However, even with advisory councils that are appointed by the CEO, it is often recommended that the council’s role be formalized with guidelines that define its responsibilities, the limits of its activity, terms of service, and the manner of election or selection of members (Worth, 2017a). Since advisory councils do not have a formal role in governance, most do not need to be mentioned in legal documents, such as bylaws. But a written statement of the council’s role may help to prevent an evolution of its role that could come into conflict with the authority of the governing board. For example, during a search for a new CEO, an advisory council may meet with candidates and make recommendations to the governing board. In other instances, the council’s advice may relate to the organization’s programs, and its opinions may affect the thinking of the governing board. In such cases, the council may have influence, but it needs to be clear that the governing board is the only entity that has authority (Worth, 2017a).

Our discussion in the balance of this chapter is focused on governing boards, that is, the boards that have legal responsibility for the organization and its programs.

The Governing Board’s Responsibilities

Now that we understand different types of boards and how their members come to sit at the table, exactly what are their responsibilities? To whom are they accountable for meeting those responsibilities? The answers are not always simple.

As Bruce Hopkins (2003) describes it, nonprofit governing board members are “fiduciaries of the organization’s resources and guardians of its mission” (p. 1). The board is accountable, that is, answerable, “for everything the organization does and how those things are accomplished” (Howe, 2002, p. 30). In the corporate world, it is clear to whom the directors are accountable and for what. Members of the corporate board of directors are the agents of the owners (the principals), and their responsibility is to direct and monitor the activities of management in the interests of the owners. Those interests also are quite clear—the maximization of economic value, consistent with sustainability of the business and the values of the owners. There are, of course, boards in the public sector as well. Most of them also have an identifiable constituency whose interest they serve; for example, a city council is accountable to the citizens of the city who elected them. But with
nonprofits in the private sector, it is not always so clear to which owners the governing board is accountable.

Perhaps the owners of a member-serving organization are the members—it is primarily their interests that the organization exists to serve. But suppose the organization is a professional association that also sets standards for practice and certifies members of the profession. It may be primarily a member-serving organization, but doesn’t the public—especially individuals served by members of the profession—also have some interest at stake? Who owns a charitable nonprofit, chartered to pursue a mission in the public interest? Are the owners the donors who support the organization through their philanthropy, the clients served by the organization, or perhaps the general public? If it is the general public, how can the board serve its interests when there may not be consensus about what the public interest means? Lacking the simple measure of results that the bottom line provides to business, by what standards should a nonprofit’s effectiveness be evaluated, and who should determine those standards? Without clarity or agreement about who owns the organization, it is difficult to answer those questions. This creates an environment in which the board’s responsibilities and role may be the subject of discussion and debate.

The Governing Board’s Legal Responsibilities

Some governing board responsibilities are unambiguous; they are defined by law. Most laws affecting nonprofit boards are state laws, enforced by state attorneys general and state courts. However, the federal government, and specifically the Internal Revenue Service (IRS), has gained increasing power in recent years.

A landmark case in 1974 is often cited as providing the most definitive statement of nonprofit board responsibility. In that case, *Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries* (usually known as just “The Sibley Hospital Case”), parents of children who had been patients at the hospital alleged that members of the board of directors had mismanaged the hospital’s assets and had placed hospital funds in accounts at banks in which they had personal financial interests. The parents claimed that hospital charges were unnecessarily high because of actions by the board. That claim provided their legal standing to bring the suit. Judge Gerhard Gessell found that the directors had not engaged in fraud or benefitted personally from their actions, but that they had breached their fiduciary responsibility to the hospital. He required that the board adopt a new policy and, in his decision, he articulated the standards of legal responsibilities of nonprofit boards that are still applied. Those responsibilities are summarized as the duties of care, loyalty, and obedience.

*Care, Loyalty, Obedience*

The **duty of care** in this context means paying attention and exercising due diligence in monitoring the organization’s finances and supervising the actions of its management. Board members who do not attend meetings, who sleep through meetings, who do not read board materials, or who vote without understanding the issues are guilty of a lack of care. Included within the concept of care is the requirement that members of the board act in a prudent manner in managing the organization’s finances—for example, by ensuring that any endowment assets are invested in a diversified portfolio to minimize risks. This does not mean that the board will necessarily have violated its responsibilities should it make the wrong investment decisions and the organization’s assets decline, but merely that it should exercise common sense and not lose money as a result of recklessness, indifference, or failure to seek appropriate advice.

The **duty of loyalty** means that members of the board put the interests of the organization above their own personal financial interests or that of another organization with which they
may also have a formal relationship. Individuals cannot use their position on a nonprofit board to enhance their own businesses or financial position. Closely related to the concept of loyalty is that of **conflict of interest**. A conflict of interest may arise, for example, when the board has to vote on whether to give a business contract to a company that may be wholly or partly owned by a member of the board itself or that perhaps may employ a board member's relative. Or a conflict could exist if the board is voting to enter some kind of partnership with another nonprofit, and one of the voting members serves on both boards. Conflicts of interest are not unusual, especially in smaller communities, where there may not be much choice about which suppliers or contractors the nonprofit can use and where prominent business leaders who own those businesses may serve on multiple nonprofit boards. Conflicts of interest are not illegal per se, but it is important how the board deals with them. Well-managed boards have formal conflict-of-interest policies that describe the procedures to be followed. Such policies usually require that potential conflicts be disclosed and that the board independently determine whether any business transaction that gives rise to the conflict is disadvantageous to the organization.

A legal concept related to conflict of interest is that of **private inurement**. Anyone who is an insider—generally any board member or officer of the organization—cannot unreasonably benefit from the organization's funds. This is related to the non-distribution constraint that was previously discussed. Nonprofits cannot use their profits to benefit owners, nor can they pay unreasonable amounts to board members or executives, which might have the same effect as sharing the profits with them—that is, giving them financial benefits as if they were owners. For example, a board can pay its CEO a salary and other compensation that is reasonable in exchange for his or her services, but anything exceeding a reasonable amount may be illegal private inurement. Likewise, an organization can do business with a company owned by a board member, but only if the payment is appropriate for the goods and services received. As mentioned previously, the federal Tax Cuts and Jobs Act of 2017 retained the standard of reasonableness overall, but imposed a tax on nonprofits that pay salaries exceeding $1 million under certain circumstances.

The **duty of obedience** requires that the board make sure that the organization is complying with the law and, in addition, that any decisions or actions taken are consistent with the organization's mission and governing documents, including its charter. Following the law may seem a simple charge, but ensuring that the organization does not drift from its mission may require greater vigilance, especially if that drift may bring with it some unanticipated risks.

**Intermediate Sanctions**

In general, if a board member carries out his or her duties faithfully and prudently, he or she is unlikely to be found personally liable for any losses that the organization may incur. Just making a mistake, or even a bad decision, is not in itself a violation of the board's responsibilities, provided that one has met the standards of care, loyalty, and obedience in making it. However, the risks to individual board members are somewhat higher today than they were prior to 1996, when federal legislation was passed providing the IRS with the authority to impose **intermediate sanctions**—that is, financial penalties to punish individuals who engage in or permit improper transactions.

Prior to the passage of intermediate sanctions, virtually the only weapon available to the IRS in dealing with a nonprofit board that violated its fiduciary responsibilities was to drop the atom bomb by revoking the organization's tax-exempt status. Facing an all-or-nothing situation and reluctant to take a drastic step that might essentially impose a death sentence on the organization—and bring harm to its clients—the IRS had few options. Intermediate sanctions provided a fly swatter alternative to the atom bomb of revoking tax-exempt status by permitting the IRS to impose penalties on individual board members or officers who
engage in an excess benefit transaction, meaning one in which “a person's level or type of compensation is deemed to be in excess of the value of the person's services” (Hopkins, 2005, p. 219). The intermediate sanctions legislation and the regulations that the IRS has issued pursuant to it are complex and beyond the scope of our discussion here, but in summary, the penalties can involve return of the excess benefits received as well as additional penalties. Because it made the possibility of IRS action more than a remote threat, the passage of intermediate sanctions was a wake-up call to nonprofit boards.

**Sarbanes-Oxley Act**

Following corporate governance scandals in the early 2000s, including the demise of two major companies, Enron and WorldCom, Congress passed the Sarbanes-Oxley Act in 2002. Sarbanes-Oxley placed new requirements on the governance of publicly traded for-profit corporations. Only two provisions of Sarbanes-Oxley apply as well to nonprofit organizations: those regarding the destruction of documents and protection for whistle-blowers. However, Sarbanes-Oxley served as another wake-up call for nonprofit boards, and many nonprofits have voluntarily adopted some or all of its provisions (Williams, 2006). In addition, some state laws—for example, the California Nonprofit Integrity Act of 2004—have incorporated Sarbanes-Oxley-type requirements. Sarbanes-Oxley will be discussed again, in more detail, in Chapter 6 of this book, which discusses nonprofit accountability in a broader framework.

In 2004, the organization Independent Sector created a Panel on the Nonprofit Sector in the wake of several controversies involving nonprofit governance. The panel issued reports in 2005 and 2007, offering over 150 recommendations and 33 principles for good governance and ethical practice by nonprofits, many of which reflect Sarbanes-Oxley–like practices (Independent Sector, 2007). The principles were revised in 2015 to include new points addressing the need for organizational codes of ethics; whistle-blower policies; risk tolerance and mitigation in response to technological advances; earned income ventures undertaken by nonprofits; transparency and privacy; executive compensation; overhead costs; and fundraising using online platforms, mobile giving, social media, and crowdsourcing (Independent Sector, 2015). In addition to Independent Sector’s principles, various state associations of nonprofits also have established standards and codes of best practices. Most encompass the practices of governing boards but also address practices in other areas. A fuller discussion of such standards can be found in Chapter 6 of this book.

**Form 990**

In 2009, the IRS introduced a revised version of Form 990, which nonprofits having at least $50,000 in annual revenues are required to file. The revised 990 included a number of changes, such as a new Part VI (see Figure 4.1), which requires “yes” or “no” answers to questions specifically addressing the practices of nonprofit boards. In effect, what had previously been a financial report was changed into a financial and governance report. To be clear, while all organizations that are required to file Form 990 must complete Part VI, the policies and practices described are generally not required by the Internal Revenue Code. That fact is even stated clearly in the heading for Section B of Part VI on the 990 form (IRS, 2013). And again, not all provisions of Sarbanes-Oxley apply to nonprofit organizations. But the questions included in Section B of Part VI of Form 990 inquire about practices that are strikingly consistent with its provisions. The IRS (2013) implies that providing the right answers may be well advised:

In general, the policies and practices described in Part VI are not required by the Internal Revenue Code. However, organizations are required by the Code to make
## Part VI Governance, Management, and Disclosure

For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Check if Schedule O contains a response or note to any line in this Part VI.

### Section A. Governing Body and Management

<table>
<thead>
<tr>
<th>Line</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a</td>
<td>Enter the number of voting members of the governing body at the end of the tax year. If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1b</td>
<td>Enter the number of voting members included in line 1a, above, who are independent.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Did the organization become aware during the year of a significant diversion of the organization's assets?</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Did the organization have members or stockholders?</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7a</td>
<td>Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?</td>
<td>7a</td>
<td></td>
</tr>
<tr>
<td>7b</td>
<td>Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:</td>
<td>7b</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>a The governing body?</td>
<td>8a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b Each committee with authority to act on behalf of the governing body?</td>
<td>8b</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If &quot;Yes,&quot; provide the names and addresses in Schedule O.</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

### Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O.

Check if Schedule O contains a response or note to any line in this Part VI.

<table>
<thead>
<tr>
<th>Line</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>10a</td>
<td>Did the organization have local chapters, branches, or affiliates?</td>
<td>10a</td>
<td></td>
</tr>
<tr>
<td>10b</td>
<td>b If &quot;Yes,&quot; did the organization have written policies and procedures governing the activities of such chapters, branches, or affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11a</td>
<td>Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?</td>
<td>11a</td>
<td></td>
</tr>
<tr>
<td>11b</td>
<td>Describe in Schedule O the process, if any, used by the organization to review this Form 990.</td>
<td>11b</td>
<td></td>
</tr>
<tr>
<td>12a</td>
<td>Did the organization have a written conflict of interest policy? If &quot;No,&quot; go to line 13.</td>
<td>12a</td>
<td></td>
</tr>
<tr>
<td>12b</td>
<td>a Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?</td>
<td>12b</td>
<td></td>
</tr>
<tr>
<td>12c</td>
<td>b Did the organization regularly and consistently monitor and enforce compliance with the policy? If &quot;Yes,&quot; describe in Schedule O how this was done.</td>
<td>12c</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Did the organization have a written whistleblower policy?</td>
<td>13</td>
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<tr>
<td>14</td>
<td>Did the organization have a written document retention and destruction policy?</td>
<td>14</td>
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<tr>
<td>15</td>
<td>a The organization's CEO, Executive Director, or top management official</td>
<td>15a</td>
<td></td>
</tr>
<tr>
<td>15b</td>
<td>b Other officers or key employees of the organization.</td>
<td>15b</td>
<td></td>
</tr>
<tr>
<td>16a</td>
<td>Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?</td>
<td>16a</td>
<td></td>
</tr>
<tr>
<td>16b</td>
<td>b If &quot;Yes,&quot; did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?</td>
<td>16b</td>
<td></td>
</tr>
</tbody>
</table>

### Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed.

18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

- [ ] Own website
- [ ] Another's website
- [ ] Upon request
- [ ] Other (explain in Schedule O)

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization.

publicly available some of the items described in Question 18 of Part VI. The IRS will use the information reported in Part VI, along with other information reported on the form, to assess noncompliance and the risk of noncompliance with federal tax law for individual organizations and across the broader exempt sector.

The State of Governance

In light of the requirements of law and best practice we have discussed, what is the state of nonprofit governance today? In a 2010 study, Amy Blackwood et al. (2014) found that a majority of nonprofits are compliant with many, but not all, of the principles covered by Form 990 questions. More than 60 percent of organizations had an audit conducted by an independent accountant, a formal review process for executive compensation, and a written conflict of interest policy. However, less than half of the organizations surveyed had whistle-blower policies or document retention and destruction policies, ironically, the only two provisions of Sarbanes-Oxley that do apply to nonprofit organizations. Not surprisingly, practices varied among organizations depending on certain characteristics. Larger organizations were more likely than smaller ones to follow all of the best governance practices. Health care institutions were the most likely to do so and arts institutions the least likely. Nonprofits that received government funds and older organizations were more likely to follow best practices than were others. In comparing their findings to some earlier studies, Blackwood et al. concluded that “The adoption of good governance practices certainly is on the rise” and speculated that IRS initiatives “may very well be creating a more effective culture of governance in the nonprofit sector” (p. 14).

The Governing Board’s Functional Responsibilities

The law primarily dictates the things nonprofit boards cannot do—fail to exercise care, place its own members’ individual interests above those of the organization, or lead the organization in directions inconsistent with its mission and the law. But what is it exactly that boards should do?

A number of authors have offered lists of a board’s functional responsibilities—that is, job descriptions listing the duties that boards should perform (see, e.g., BoardSource, 2010; Ingram, 2015). Most lists are similar on the principal activities in which the board should be engaged, although there are often differences among the experts with regard to the division of specific tasks between the board and the organization’s CEO. The following responsibilities are common to most board job descriptions, although, as we will see later, some authors express contrary views.

Appoint, Support, and Evaluate the CEO

Although the CEO may serve as an ex officio member of the board, that person is generally appointed by the board and serves at the pleasure of the board, subject, of course, to any contractual terms that may be negotiated at the time of appointment. However, having appointed the CEO, the board also has a responsibility to support that individual. This includes acting as a sounding board for the CEO to discuss ideas and problems and also coming to his or her defense when pressures arise from within or outside the organization. If the board’s response to every criticism of the CEO’s actions is to challenge him or her or to take the side of the critic, the board will quickly undermine the CEO’s ability to be effective, and it is unlikely to attract or retain a strong executive. But the board also is responsible for setting expectations for the CEO, monitoring his or her performance against those expectations, and providing the executive with performance evaluations. Of course,
if expectations are regularly not met, the board also has the responsibility of dismissing the CEO and beginning a search for a successor.

The relationship between the governing board and the CEO is complex, and it is a topic that generates its own considerable literature. The subject is of such importance that we will return to a more thorough discussion of it shortly.

**Establish a Clear Institutional Mission and Purpose**

Establishing the organization's mission is the responsibility of the board. Although the organization's charter states its purposes in broad terms, the board can and should periodically review its mission; indeed, doing so is often the first step in the process of strategic planning.

**Approve the Organization's Programs**

Although experts advise boards to avoid becoming involved in the details of management, most think that the board should approve the programs undertaken by the organization to meet its responsibility for ensuring adherence to the mission and protecting the organization's financial viability. For example, the board of a liberal arts college would need to consider whether establishing a business school would be consistent with its mission, the implications for the college's financial resources, and the ability of the college to maintain its academic standards and reputation in light of such an expansion of its programs. The board of an organization serving dinners to homeless people would need to consider any extension of its activities to provide medical services or housing. Because such decisions relate directly to the mission, which is the responsibility of the board, they cannot be delegated to the CEO or the staff.

**Ensure Sound Financial Management and the Organization's Financial Stability**

Protecting the organization's assets is, of course, central to the board's legal responsibility as fiduciary. Most boards approve annual budgets and receive regular reports of the organization's financial status. Most organizations engage outside auditors and many boards also have separate audit committees that meet with those outside auditors (Blackwood et al., 2014).

Some authors say that board members' responsibility to ensure the organization's fiscal soundness implies an obligation to provide their own financial gifts and actively engage in fundraising. Indeed, except perhaps for the debate about the appropriate relationship between the board and the CEO, no subject commands more ink, or more lung power, than the role of the board in giving and raising philanthropic funds. Of course, not all boards are expected to provide their personal financial support to the organizations they serve. Boards of member-serving organizations often have no significant responsibility for fundraising, since the largest portion of revenue may come from dues, subscriptions, or meeting fees. Organizations that are primarily or entirely dependent on revenue from government contracts and grants also may not place emphasis on the board's fundraising role. But in most charitable nonprofits, the board is expected to play a significant role in providing and soliciting philanthropic funds.

There are divergent views on whether board members should be required to give or raise a specific minimum amount, and the question raises some complicated issues. Some boards require a minimum personal gift from each board member. However, if this requirement is substantial, it may make it more difficult to achieve appropriate diversity among the board membership without making exceptions to the policy for those who may bring important
skills and qualities but do not possess financial capacity. Then again, making such exceptions may introduce the perception that there are two classes of board members—those who give and those who don’t. If that perception exists, those who cannot provide financial support may too readily defer to those who are known to be important sources of support to the organization. On the other hand, if the minimum is set so low that all board members can meet it, it can have the effect of converting an intended floor into a ceiling. In other words, some board members who have the financial ability to give more than the minimum may come to see the minimum as all that is expected of them, foreclosing the possibility of larger gifts. Such a situation may leave the organization with less total revenue than it might otherwise receive (Worth, 2016, pp. 135–136).

Some boards do not set a minimum for personal giving by board members but adopt what is often called a **give-or-get policy**, requiring that each board member either give personally or solicit gifts from others to total the minimum amount. However, this may also establish a standard that some board members may find difficult to meet, especially if they are not involved in business or professional circles that provide access to wealth. Furthermore, it raises the risk that board members may solicit gifts without coordination with the organization’s staff, creating a potentially chaotic situation that could alienate donors. An alternative to setting minimums for board giving and getting is to simply establish the expectation that each board member will give and participate in fundraising proportionate to his or her capacity to do so. If that standard is firmly embedded in the culture of the board, then conscience and the judgment of peers may motivate the board to its peak fundraising performance without the risks inherent in defining specific minimum amounts. Whatever approach is taken by individual boards, the subject of the board’s responsibility for giving and fundraising is on the agenda for discussion at many nonprofit organizations today (Worth, 2016).

**Establish Standards for Organizational Performance and Hold the Organization Accountable**

The board should define the standards by which an organization’s effectiveness in achieving its mission is to be evaluated. Establishing standards to judge whether the organization is effectively employing the resources entrusted to it in pursuit of its mission is a fundamental aspect of the board’s responsibility to those who provide financial support, to the society that grants the organization exemption from taxation, and to those whose needs its programs serve.

Some authors see the role of nonprofit boards as especially important because many nonprofits do not face the same market discipline that business firms do. As John Carver (2006) explains, “Without a market to summarize consumer judgment, [a nonprofit] organization literally does not know what its product is worth…. In the absence of a market test, the board must perform that function” (p. 15). Christine Letts, William Ryan, and Allen Grossman (1999) elaborate on this point:

> Compared to their for-profit counterparts, nonprofit boards carry a much bigger burden in demanding and supporting performance…. [In the for-profit world,] both boards and management can use market feedback to assess how well they are performing: customers, investors, and creditors all make evaluations that eventually show up in the bottom line…. In contrast, the nonprofit board must often substitute for many of the feedback systems available in the marketplace. Nonprofit clients very often do not have a choice of providers, and are therefore unlikely to signal dissatisfaction by “voting with their feet.” [Funders of nonprofits] may signal dissatisfaction by withdrawing their support, but are much less likely to play the affirmative role of a shareholder activist or institutional investor. (p. 133)
For these reasons, Letts et al. (1999) argue that “nonprofit boards are more vital [than for-profit boards] in ensuring performance and accountability” (p. 132).

How do the activities of actual boards compare with the functional responsibilities identified by experts? In 2012, Grant Thornton conducted a survey of nonprofit boards and asked what activity or responsibility was the “most important focus” of the board in the preceding year. Of those responding, 27 percent identified strategic planning, 22 percent fundraising, 19 percent “ensuring effective programs,” 9 percent “management performance,” 5 percent protecting the organization’s “reputation,” 3 percent the “economy/recession,” 3 percent “cash management,” 2 percent “investment management,” and 2 percent “enterprise risk management” (p. 4).

The Board and the CEO

Young, small nonprofit organizations often have a working board. In those situations, volunteer members of the board have a hands-on role and perform all of the organization's operations, from raising funds, to balancing its bank accounts, to making decisions about its programs. But as the organization grows and a professional is hired to serve as its executive officer, the division of responsibilities and functions between the board and that staff leader becomes a central consideration.

The relationship between the governing board and the organization's CEO is the subject of an extensive literature, reflecting divergent views. The questions addressed in this literature go well beyond who does what. They include fundamental assumptions about the nature of nonprofit governance and leadership.

At the heart of the matter is the question of who leads the nonprofit organization. In some organizations, the CEO may be dominant, with the board playing a passive role. The CEO proposes and the board disposes, often with little discussion or debate. As noted earlier, the CEO may even come to influence the selection of board members, in effect choosing his or her own bosses. This situation could arise in any organization, but it is especially common in organizations led by their founders, a special case we will discuss further in Chapter 5.

The realities of many organizations may enable CEOs to gain the upper hand. Boards are composed of “part-time amateurs,” while the organization's staff, including the CEO, are “full-time professionals” (Chait, Holland, & Taylor, 1996, p. 3). In other words, the CEO may know more about the organization and its programs than do the lay trustees, especially if its programs involve highly technical services, and board members may be reluctant to show their ignorance by questioning. Large boards pose a special challenge in this regard. Individual board members may be unwilling to risk embarrassment by challenging a CEO's proposals in front of a large number of other board members, or they may assume that others on the board are well-informed and just go along with what appears to be a consensus. The CEO may control access to information about the organization, and indeed, the CEO may be the only one who knows what information actually exists. He or she may determine what information reaches the board and develop the agenda of matters that the board will even get to consider. In sum, it may be possible for a CEO to manipulate the board, orchestrate board meetings, and relegate the board to the role of a rubber stamp for his or her initiatives.

The danger in such a scenario is that the CEO could lead the board and the organization in directions that are inappropriate or risky and that the board may not be able to meet its responsibilities for ensuring adherence to mission, fiscal soundness, and optimum performance. For example, in 2002, the Washington, DC, community was shocked by allegations that the long-serving executive director of the United Way of the National Capital
Area (UWNCA), Oral Suer, had received as much as $1.6 million in improper payments, including non-reimbursed cash advances, payment for vacation and sick leave time that he had in fact taken, and reimbursement for travel and entertainment that were personal rather than related to United Way business. Those improper payments were alleged to have occurred over the period of 27 years that Suer was employed at the UWNCA (Wolverton, 2003). The UWNCA’s board had 45 members, and some observers attributed the abuses to the board’s large size and the fact that the executive director had maintained tight control over communication with the board and among its members. One former employee of the organization told the Chronicle of Philanthropy, “This was definitely a ‘clapper’ board. They listened to staff members tell wonderful stories about how much money we were raising, and they applauded instead of asking tough questions” (Wolverton, 2003, p. 27). Others cited the organization’s internal culture, which made it difficult for the board to meet its fiduciary responsibilities. One board member said that the board met only four times a year, a total of eight hours, and that the large board discouraged her from speaking. She said that she didn’t have the phone numbers of the other board members, so she was unable to follow up with them after meetings. When she tried to obtain the numbers, a secretary at UWNCA told her that the numbers were confidential (Wolverton, 2003).

An alternative scenario, in which the board micromanages the organization and usurps the authority of the CEO, is no better. Such a board is likely to find it difficult to attract or retain a strong chief executive and may find itself making decisions about details outside its expertise. What most experts recommend is neither of these extreme scenarios but rather a partnership between the board and the CEO in the leadership of the organization. There are, however, different views on exactly how this partnership should be constructed and should operate.

Various authors have addressed the subject of the board–CEO relationship. A comprehensive review would be beyond the scope of this chapter, but let’s compare the thinking of three authors who are widely cited and whose different approaches highlight the major issues. First, we will look at John Carver’s policy governance model, described in his 1990 book Boards That Make a Difference and in subsequent editions published in 1997 and 2006. Carver draws a clear line between the board’s responsibility for policy making and the executive’s responsibility for implementation and provides what he calls an “operating system” to ensure that the distinction is maintained. Next, we will review the concept of governance as leadership, described by Richard Chait, William Ryan, and Barbara Taylor (2005) in their book of that title. The book was sponsored by BoardSource, an organization that provides research, education, and assistance to nonprofit organization boards. Chait et al. (2005) challenge Carver (1990, 1997), writing that “governing is too complicated to reduce to simple aphorisms, however seductive, like ‘boards set policies which administrators implement’” (p. 5). Instead, they advocate a leadership role for the board that blurs the distinction between policy and implementation and focuses the attention of both boards and CEOs on “what matters most.” And, finally, we will consider the research of Robert Herman and Dick Heimovics (2005), who argue that the most effective CEOs are those who accept the reality of their “psychological centrality” in the organization and provide board-centered leadership, working to “develop, promote, and enable their boards’ effective functioning” (p. 157). Following the original work by Herman and Heimovics, Herman has continued to discuss their findings in additional writings (e.g., Herman, 2016).

**Carver’s Policy Governance Model**

According to John Carver (2006), boards should be the leaders of the organization, “not by invading territory best left to management but by controlling the big picture, the long term, and the value laden” (p. 6). But his diagnosis of the prevailing reality is bleak. He observes boards mired in the trivial, largely reactive to staff initiatives, and absorbed in
reviewing and rehashing actions the staff has already undertaken (Carver, spp. 19–20). Carver argues that board committees are often organized in a way that leads to this condition. Committee responsibilities often coincide with those of senior managers; for example, there may be committees on finance, fundraising, program evaluation, and other areas of the organization's operation overseen by professional staff. In many cases, the staff prepares materials for meetings of the relevant committee and influences what items the committee considers. This structure pulls the board's attention into the details of each of the management silos. Board members thus become either super managers or just advisers to the professional staff. This prevents them from staying focused on big-picture matters such as mission and goals. As Carver writes, “Our tradition of board work encourages boards to derive their agendas from staff-based divisions of work. This common board practice is tantamount to classifying a manager's functions on the basis of his or her secretary's job areas” (p. 46).

Carver (2006) calls for a clear distinction between the work of the board and that of the management staff, and he argues that the board should lead the organization, focusing its attention on establishing policies. But this does not mean the kinds of policies that boards often discuss, such as personnel policies, which really reflect the work of management and are related to implementation rather than leadership of the organization. The board should make policies that reflect the board's values and the interests of the “moral owners” of the organization. In Carver's (2006) model, boards lead by developing and maintaining policies in four areas:

1. **Ends to be achieved:** Ends policy statements describe what the organization is to achieve and “could be called results, impacts, goals, or outcomes as well as ends, each title having its own connotations” (p. 48). The broadest ends statement would be the organization's mission. More specific ends policies might address more detailed goals—for example, those related to products, consumers, and costs.

2. **Means to the ends:** In Carver's model, means statements are expressed in terms of “executive limitations”—that is, boundaries that the CEO may not cross in pursuing the ends established by the board. For example, the broadest statement of policy in this area might be that the CEO may not violate the law. More detailed limitations might address more specific constraints, perhaps levels of cost and debt that may not be exceeded. Carver argues that by stating executive limitations in negative terms—that is, by prescribing what executives may not do—the board preserves maximum flexibility for the CEO. Subject to the constraints that the board has explicitly stipulated, the CEO is free to determine the best methods for achieving the ends that the board has established, without the board's inappropriate involvement in operations.

3. **Board–staff relationship:** Policy statements in this area clearly delineate the responsibilities of the board and the CEO, defining what decisions are delegated to the CEO and which ones are retained by the board. This category of statement also includes specific criteria for monitoring and evaluating the CEO's performance. Carter argues that one benefit of such clarity is that it addresses the common concern about board members communicating directly with other staff within the organization or with other volunteers. “In a formal sense, the CEO role insulates the staff from the board and the board from the staff. However, the insulation does not rigidly prohibit contact between board and staff members. On the contrary, those very human connections are never problematic if the formal roles are clear” (p. 161).

4. **Process of governance:** This fourth category of policy addresses the board's own role and operation, clarifying which owners it represents and defining its own “job process
and products”—for example, the procedure through which new board members are elected (p. 51).

A board practicing Carver’s (2006) model would be driven in its meetings by the need to develop and maintain its policy manual. When issues arise, the first questions to be addressed would be to which category of policy the issue belongs, whose issue it is, and whether it is addressed by an existing policy—if not, a new policy needs to be adopted, eliciting discussion and debate. Carver argues that this approach steers boards away from the mundane, from show-and-tell presentations by staff, and from merely rubber-stamping the staff’s recommendations. According to Carver, following the policy governance approach leads the board toward discussions that are focused on the long term and rooted in the board’s values and perspectives (p. 129).

**Chait, Ryan, and Taylor: Governance as Leadership**

Now let’s examine a different approach, the governance-as-leadership model proposed by Chait et al. (2005). Chait et al.’s 2005 book has gained wide visibility in the nonprofit sector, in part because of its sponsorship by BoardSource, which bases its board training programs largely on this model. A 2013 book by Cathy Trower provides a “practitioner’s guide” that offers practical guidance to boards for implementing Chait et al.’s (2005) recommendations.

Chait et al. (2005) agree with many of Carver’s criticisms of the way boards operate today. Boards are not leading their organizations. They are reactive to staff initiatives. They structure their work in a way that draws them into managerial details and routine technical work. Indeed, these authors argue, things are turned upside down. Boards are so mired in operational details that they are, in effect, managing their organizations. Meanwhile, CEOs are articulating missions, beliefs, values, and cultures—in essence leading their organizations and engaging in activities that “closely resemble conventional notions of governing” (Chait et al., 2005, p. 3). As the authors explain,

> In theory, if not in practice, boards of trustees are supposed to be the ultimate guardians of institutional ethos and organizational values. Boards are charged with setting the organizations agenda and priorities…. Boards are empowered to specify the most important problems and opportunities that management should pursue. If this logic holds, as we contend, then many nonprofit executives are not only leading their organizations, but… they are actually governing them as well. (p. 3)

With sophisticated leaders at the helm of nonprofits, a substantial portion of the governance portfolio has moved to the executive suite. The residue remains in the boardroom. This surprise twist in the story line suggests that the real threat to nonprofit governance today may not be a board that micromanages but a board that microgoverns, while blind to governance as leadership. (pp. 4–5)

But while their diagnosis of board problems is similar to Carver’s (1990, 1997, 2006), Chait and his colleagues (2005) offer a quite different prescription. Instead of drawing sharp lines between policy and implementation, clearly dividing the role of the board and that of the CEO, they call for breaking down the barriers and focusing the attention of both the board and the CEO on the critical issues facing the organization. In other words, the question should not be, “Is this an issue of policy or implementation?” Rather, the question should be, “Is the issue at hand important or unimportant, central or peripheral?” (Taylor, Chait, & Holland, 1999, p. 62).
In their book, Chait et al. (2005) define a new model, which they call “governance as leadership,” based on three “modes” of governance in which a board may be operating at any given time—the **fiduciary mode**, the **strategic mode**, and the **generative mode**:

1. **The fiduciary mode:** When the board is operating in this mode, it is concerned with the “bedrock of governance,” that is, with matters such as stewardship of tangible assets, faithfulness to mission, performance accountability, and obedience to law—in other words, generally addressing its legal responsibilities.

2. **The strategic mode:** When operating in the strategic mode, boards go beyond their basic fiduciary responsibilities and “create a true strategic partnership with management,” addressing matters such as the organization’s long-term directions and goals (p. 69).

3. **The generative mode:** A board in generative mode is engaged in generative thinking—that is, the creative, out-of-the-box thinking in which visionary leaders often engage. It relates to values and judgments, encompasses “sense making” (essentially, coming to understand things in new ways), and may result in insights that lead to paradigm shifts. The authors say that generative thinking is a necessary foundation for setting direction and goals and thus an essential activity of leadership.

Chait et al. (2005) observe that most boards work only in the fiduciary and strategic modes and therefore are not participating in leadership of the organization. However, “when trustees work well in all three [italics added] of these modes, the board achieves governance as leadership” (p. 7). Thus, rather than maintaining a clear distinction between what is the board’s territory and what is the CEO’s, Chait et al. (2005) propose that boards and CEOs focus together on what matters most, moving together among the three modes as appropriate to address the issues at hand. Setting goals, and thus using generative thinking, cannot be a task for the CEO or the board alone but rather must be a **shared** activity:

Because we resolutely regard this [generative thinking] as shared work, we cannot offer what the board-improvement field so often promises trustees and executives: a set of bright lights that neatly divide the board’s work (policy, strategy, and governance) from the staff’s (administration, implementation, and management). It simply makes no sense to reserve generative work for boards when leaders are vital to the process, or to reserve for leaders work that belongs at the heart of governance. Generative work demands a fusion of thinking, not a division of labor. (Chait et al., 2005, p. 95)

Simply stated, Carver (1990, 1997, 2006) envisions the board and the CEO on opposite sides of the table, one clearly labeled “policy” and the other “implementation.” Chait and his coauthors (2005) envision a three-sided table, each representing one of the modes discussed previously. The board and the CEO sit together on one side but move around the table to the other sides, depending on the nature of the business to be considered at the time.

**Herman and Heimovics: Psychological Centrality and Board-Centered Leadership**

In Carver’s (1990, 1997, 2006) approach, boards lead their organizations. Chait et al. (2005) describe a model for leadership shared by the board and the chief executive. In 2005, Robert Herman and Dick Heimovics provided a third perspective, which Herman has continued to explore in more recent writing (Herman, 2016). Based on their research concerning effective
nonprofit CEOs, Herman and Heimovics offer a pragmatic approach, concluding that CEOs should lead but that their leadership needs to be board centered and designed to support the board in meeting its governing responsibilities.

The *purposive-rational model* of organizations, based on Max Weber’s theory of the bureaucracy, conceives of the board as the top of a hierarchy and the CEO as merely its agent. Indeed, Herman and Heimovics’s (2005) review of the normative literature on nonprofit boards finds that most research has been based on that model and thus “has advanced a heroic ideal for nonprofit boards” (p. 155). However, they apply the *social-constructionist model* and explain that “official or intended goals, structures, and procedures may exist only on paper. Actual goals, structures, and procedures emerge and change as participants interact and socially construct the meaning of ongoing events” (p. 156). Regardless of what the organizational chart or the conventional view of organizations may suggest, Herman and Heimovics find that the reality in most organizations is that of *executive psychological centrality*. In other words, it is the CEO who is actually seen as responsible for the organization’s success or failure. Herman and Heimovics interviewed CEOs, board chairs, and other staff members and found that all of them saw the chief executive as “centrally responsible for what happens,” including both successful and unsuccessful events (p. 156). This does not imply that the CEO holds more formal authority than the board or that the CEO is indeed the central figure in the life of the organization. “Psychological centrality” means that he or she is perceived as responsible, even by members of the board.

If this is the reality, then what do Herman and Heimovics (2005) recommend that CEOs should do? They do not recommend that CEOs become autocrats or demote their boards to rubber stamps, but rather that they take a leadership role to ensure “that boards fulfill their legal, organizational, and public roles” (p. 156). In exercising board-centered leadership, CEOs take responsibility for “supporting and facilitating the board’s work.” In doing so, they engage in six behaviors that Herman and Heimovics observed among the effective, board-centered executives they studied (p. 158):

1. Facilitating interaction in board relationships
2. Showing consideration and respect toward board members
3. Envisioning change and innovation for the organization with the board
4. Providing useful and helpful information to the board
5. Initiating and maintaining structure for the board
6. Promoting board accomplishments and productivity

Herman and Heimovics (2005) conclude that not only are the CEOs who have developed these board-centered leadership skills effective in their roles, but they also have hardworking, effective boards. “The board-centered executive is likely to be effective because he or she has grasped that the work of the board is critical in adapting to and affecting the constraints and opportunities in the environment” (p. 159). In a study of “high-impact nonprofits,” Leslie Crutchfield and Heather Grant (2012) draw a similar conclusion, writing that while “many leaders try to minimize their interactions with their board, or they perpetually fight with them … great nonprofit leaders have a positive relationship with the board. They share leadership to advance the larger cause” (p. 201).

But, what is the reality? Do most nonprofit CEOs provide board-centered leadership as Herman and Heimovics (2005) and others recommend? The 2011 *Daring to Lead* study (Moyers, 2011) suggests that many are not doing so. The majority of CEOs responding to the study reported spending less than 10 hours per month on board-related activities. Moyers (2011) speculates that “perhaps executives fail to see the immediate benefit of spending more
time with the board, since the activities on which the largest number of respondents said they need to spend more time—marketing and fundraising—produce tangible results” (p. 5). But, paradoxically, nonprofit CEOs who do spend more time on the board report more satisfaction with board performance, which is consistent with the conclusions of the earlier research by Herman and Heimovics (Moyers, 2011, p. 6).

Explaining Board Behavior

The recommendations of Chait et al. (2005), Carver (1990, 1997, 2006), and Herman and Heimovics (2005) suggest how things should be. But how do governing boards actually behave? Where do they focus their attention? And how do they define their relationship with the CEO? And what determines the patterns that we can observe? These questions have been the subject of research by various scholars, who have proposed contingency approaches; in other words, they argue that how boards behave depends on the internal and external conditions they face.

Patricia Bradshaw (2009) identified five “board configurations,” determined in part by the external circumstances that the organization faces. For example, organizations facing an external environment that is simple and stable tend to follow something similar to Carver’s policy governance model, in which the board is “more formalized, hierarchical, and bureaucratic” (Bradshaw, p. 69). Boards that face an external environment of uncertainty and turbulence, but that also have a simple array of stakeholders, adopt an “entrepreneurial/corporate configuration.” That is less formal and may include more overlap of board and staff roles (Bradshaw, p. 70), perhaps something more like the environment implied by Chait et al. (2005). Those facing a stable environment, but a complex constituency adopt a constituency/representative configuration, in which the board includes representatives of various groups or associated organizations (Bradshaw, p. 69), perhaps something like the hybrid model discussed earlier in this chapter. Organizations that must address turbulence and uncertainty in their environments as well as complex, decentralized constituencies may exhibit what Bradshaw calls an “emergent cellular configuration.” That includes a flatter structure that is dynamic and fluid, without clear roles and lines of authority, and with participants often demonstrating a commitment to alternative or “nonmainstream” ideologies (Bradshaw, p. 70). And, of course, some boards illustrate variations on these four basic configurations. The existence of these models reflects the reality discussed in Chapter 3, that nonprofit organizations are open systems, highly influenced by the environment that surrounds them.

In 2010, Francie Ostrower and Melissa Stone studied boards and also took a contingency approach, looking at both internal and external variables. They found that boards at larger organizations are more focused on financial monitoring than on external roles (p. 912). Boards without a professional CEO are more likely to monitor programs and services than those that have a professional CEO in place (p. 912). Boards with women as members are more attuned to external roles and boards with members who also serve on corporate boards tend to focus more on financial oversight (p. 913). Larger boards are more involved in fundraising than are smaller boards, perhaps, as Ostrower and Stone speculate, because the board has been made larger in part as a fundraising strategy (p. 913). An interesting—and likely controversial—finding is that “having the CEO as a voting member of the board undermines the governance role of the board” (Ostrower & Stone, p. 913).

Managing Nonprofit Boards

In earlier times, an invitation to join a nonprofit board might have been construed as primarily a social opportunity. Although boards had legal responsibilities, in the days before Sarbanes-
Oxley, Form 990, and charity watchdogs, many could operate informally and comfortably, without too much attention to their effectiveness, any expectation that their work would be scrutinized by outsiders, or perhaps any great understanding of the board’s role. But developments discussed in this chapter have changed the environment, requiring that the board’s activity and performance be actively monitored and managed.

**Role of the Chair**

The board chair is the individual responsible for leading the board. In addition, the chair is responsible for board process and board tasks. With regard to the former, it is the chair’s responsibility to build the board into a team and to establish its culture. The chair also is primarily responsible for identifying the tasks that the board will undertake, that is, setting its agenda. In practice, identifying the board’s tasks is often a responsibility shared with the CEO and committees of the board (BoardSource, 2010).

There sometimes can be tension arising from confusion about the respective roles of the board chair, the board, and the CEO (BoardSource, 2010). Carver (2006) emphasizes the point that only the full board can make decisions and take action; in other words, the chair leads the board but does not hold full authority for the organization. The CEO is appointed by the board, not by the chair, and the CEO reports to the board, not to its chair as an individual. In other words, as Carver (2006) explains, the board chair and the CEO are more like colleagues than supervisor and subordinate. Nevertheless, the board chair is often the board’s principal liaison to the CEO, and it is important that the two individuals establish and maintain “a professional relationship with clear boundaries” (BoardSource, 2010, p. 88).

**Governance Committee**

In years past, many boards—primarily those that were self-perpetuating—had a standing committee charged with identifying possible new board members and with recommending candidates for election by the full board. Usually called the nominating committee or committee on nominations, this group functioned essentially as the board’s talent scout; its responsibility was primarily to assure that individuals selected to join the board would be compatible with the board’s culture and, perhaps, bring the capacity to provide personal financial support and help with fundraising. In most well-managed boards today, the relatively simple task of the nominating committee has been expanded and the committee has been renamed as the governance committee, or by some similar term, reflecting its larger role. As BoardSource (2010) explains:

> Rather than focusing on nominations for annual elections [like a nominating committee], the governance committee works year-round to guarantee that the board takes responsibility for its own development, learning, and behavior; sets and enforces its own expectations; and allots time, attention, and resources to understanding its stewardship role. The governance committee does not run the board, but it makes it possible for the board to be well-run. (p. 63)

The responsibilities of the governance committee encompass that of identifying potential new members, like the traditional nominating committee, but also a broader process of board development, which generally includes nine steps: identify the board’s needs in terms of skills, knowledge, connections, and perspectives; identify and cultivate the interest of prospective board members to meet those needs; recruit new board members; provide new members with orientation, both to the board and to the organization; involve board members
in appropriate committee and task force assignments; educate the board, both with regard to
the organization's mission and programs and to best governance practice; evaluate the board
as a whole as well as individual members; rotate members through term limits; and celebrate

Periodic self-evaluation is a best practice recommended by BoardSource (2010) and
others. The governance committee initiates board evaluations, which typically use surveys,
sometimes conducted by an outside consultant. Some boards also require the evaluation of
individual members, which may include self-evaluation and/or evaluation by peers. This is
commonly undertaken when an individual member is being considered for election to a new
term (BoardSource, 2010, p. 269).

**Board Professionals**

Overall management of the board is a responsibility of the board chair, and perhaps a governance
committee, working in cooperation with the CEO. Other members of the organization's
staff also may be involved in supporting board committees; for example, the chief financial
officer may work closely with a finance committee and the chief development officer with a
development or fundraising committee of the board. When such circumstances exist, most
authors, notably Carver (2006), emphasize the importance of maintaining clarity with regard
to reporting lines and the authority of individual board members. For example, the chief
financial officer, chief development officer, and other senior staff members may provide staff
support to their respective board committees and their chairs and develop close relationships
with them, but those officers report to the CEO, not to the committee chairs. In addition, the
committee chairs have no authority to direct staff of the organization. Their committees may
develop recommendations to the full board, which the full board may adopt and transmit to the
CEO, who may in turn delegate responsibility to other senior staff (Carver, 2006). Of course,
in many cases personal relationships may lead to a situation in which not all communication
and influence follow such formal lines. (Remember our earlier discussion about the informal
hierarchies that exist in many, nonprofit organizations.) But if the appropriate roles of the
board, individual board members, and staff members are not respected, there is the potential
for undermining the CEO and creating tension within the organization.

In some large organizations with large boards, a senior staff member is charged explicitly
with supporting board development activities. This is a responsibility that is sometimes
assigned to the chief development officer, since that individual often enjoys close relationships
with board members, especially if the board is engaged in fundraising and includes important
donors. In other cases, the organization's general counsel may play this role, in light of his or her
knowledge regarding the legal requirements of governance. The individual may also be titled
corporate secretary and have responsibility for the maintenance of the organization's official
documents and records. Some institutions, notably colleges and universities, have a senior staff
officer for whom supporting the board is a full-time job. The Society for Corporate Governance
was founded in 1946 and includes board professionals in the corporate and nonprofit sectors
(www.governanceprofessionals.org/about/aboutus). Reflecting the growing prevalence of such
positions in higher education institutions, the Association of Governing Boards of Universities
and Colleges (AGB), maintains a program for board professionals and sponsors an online
network and conferences for members (agb.org/agb-board-professionals). Governing board
management is thus emerging as an identifiable subspecialty of nonprofit management.

**Nonprofit Board Effectiveness**

“So,” students may be wondering at this point in the chapter, “what’s the bottom line?” Are
most nonprofit boards effective or not? What are the characteristics of effective boards?
What is the right way to define the relationship between the board and the nonprofit CEO? What is indeed the best model for governance, and what are the best practices that boards should follow?

Critics of Board Performance

In answer to the question of how nonprofit boards are doing, there is no shortage of negative commentary extending over decades. For example, in 1996, Chait, Holland, and Taylor reported that “after 10 years of research and dozens of engagements as consultants to nonprofit boards, we have reached a rather stark conclusion: effective governance by a board of trustees is a relatively rare and unnatural act” (p. 1). Writing a decade later, Carver (2006) essentially agrees, asserting that “the problem is not that a group or an individual occasionally slips into poor practice, but that intelligent, caring individuals regularly exhibit procedures of governance that are deeply flawed” (p. 18). Nearly a decade after Carver’s observation, Ryan, Chait, and Taylor (2013) report continuing concerns, writing that “the board is widely regarded as a problematic institution. And it’s not just the occasional nonprofit financial implosion or scandal that’s troubling. All institutions, after all, have their failures. Perhaps more worrisome is the widespread sense that underperforming boards are the norm, not the exception.”

Such criticisms cannot be ignored, but it may be prudent to question the evidence behind such sweeping statements. Some are based on experience rather than research. Some are reported by consultants who are called on to work with troubled boards and whose samples therefore may be somewhat self-selecting. Moreover, some assessments may reflect the values and views of the assessor about what nonprofit organizations and their boards should be like.

In a study published in 2017, BoardSource surveyed the opinions of board chairs and nonprofit CEOs regarding the performance of their boards. The results were more nuanced than the realities portrayed by the harshest critics. Boards were described as performing well with regard to fundamental responsibilities, including understanding of the mission and providing financial oversight. Survey respondents did see room for improvement with regard to external responsibilities, including fundraising, advocacy, community building, and outreach (BoardSource, 2017, p. 28).

In sum, the evidence suggests that it is unreasonable to argue that board failure is the norm. However, it is reasonable to believe that the performance of boards and their members can be improved and to continue the search for best practices in nonprofit governance.

The Search for Best Practices

Various researchers have attempted to identify behaviors that are associated with effective nonprofit governing boards—that is, to identify those practices that, if followed, will lead to effective governance. BoardSource (2018) assembled a panel of experts to address the question. Their consensus produced the following “twelve principles of governance that power exceptional boards”:

1. **Constructive partnership**: Exceptional boards govern in constructive partnership with the chief executive, recognizing that the effectiveness of the board and chief executive is interdependent. They build this partnership through trust, candor, respect, and honest communication.

2. **Mission driven**: Exceptional boards shape and uphold the mission, articulate a compelling vision, and ensure the congruence between decisions and organizational
values. They treat questions of mission, vision, and core values not as exercises to be done once, but as statements of crucial importance to be drilled down and folded into deliberations.

3. **Strategic thinking**: Exceptional boards allocate time to what matters most and ensure the congruence between decisions and core values.

4. **Culture of inquiry**: Exceptional boards institutionalize a culture of inquiry, constructive debate, and engaged teamwork that leads to sound and shared decision making.

5. **Independent-mindedness**: Exceptional boards are independent-minded. When making decisions on behalf of the organization, board members put the interests of the organization above those of the chief executive, themselves, or other interested parties.

6. **Ethos of transparency**: Exceptional boards promote an ethos of transparency and ethical behavior by ensuring that donors, stakeholders, and interested members of the public have access to appropriate and accurate information regarding finances and operations.

7. **Compliance with integrity**: Exceptional boards govern with full recognition of the importance of their fiduciary responsibilities, developing a culture of compliance through appropriate mechanisms for active oversight.

8. **Sustaining resources**: Exceptional boards ensure that the organization’s resources are balanced with its strategic priorities and capabilities. Individual board members extend the reach of the organization by actively using their own reputations and networks to secure funds, expertise, and access.

9. **Results oriented**: Exceptional boards track the organization’s advancement toward mission and evaluate the performance of major programs and services.

10. **Intentional board practices**: Exceptional boards make form follow function when it comes to their own operations. To provide stable leadership to the organization, they invest in structures and practices that transcend individuals and thoughtfully adjust them to suit changing circumstances.

11. **Continuous learning**: Exceptional boards embrace the qualities of a continuous learning organization, evaluating their own performance and assessing the value that they add to the organization.

12. **Revitalization**: Exceptional boards energize themselves through planned turnover, thoughtful recruitment, and intentional cultivation of future officers.¹

BoardSource’s 12 principles of governance (2018) offer an attractive description of an exceptional board and reflect the consensus of a distinguished panel of experts assembled to develop them. But it is nevertheless primarily a compilation of practitioner wisdom rather than science. And there remains no single definition of board effectiveness. This is so in part because there is no single standard for defining the effectiveness of nonprofit organizations. As John Carver (2006) notes, the variables chosen for measurement in some research studies seem to imply that effectiveness in governance is to be judged by whether board members are more fulfilled, challenged, or involved; the CEO is happier or the board is less meddlesome; the board raises more funds; grant revenues are increased; committees are more active; or the board chair perceives the CEO to be meeting his or her objectives. (p. 337)
The link between such variables and the effectiveness of boards—or organizations—remains elusive. BoardSource’s 2017 survey found that 93 percent of board chairs think that the board has a positive or very positive impact on the organization’s performance. That view is also held by 81 percent of CEOs (BoardSource, 2017, p. 44). As BoardSource acknowledges, its findings report perceptions, which are subjective and lack “objective validation” (p. 44). Some academic authors have addressed that point. In a 2002 review of the literature on nonprofit effectiveness, Robert Herman and David Renz conclude that “[board] effectiveness is whatever significant stakeholders think it is, and there is no single objective reality.” Calling the concept of best practices “somewhat of a holy grail,” they advise nonprofit boards and CEOs to take a skeptical view of “one right way” prescriptions:

Many sources that claim to offer “best practices” for NPO [nonprofit organization] boards or management provide little or no basis for their assertions. The evidence from our … study does not support the claim that particular board and management practices are automatically best or even good (that is, that using them leads to effective boards and organizations). We prefer to talk in terms of “promising practices” to describe those approaches that warrant consideration.

Not only is there no “silver bullet” (i.e., one practice that ensures board effectiveness)—there is no “silver arsenal.” In the context of other research, we support the assertion that boards (perhaps with facilitative leadership from their chief executives) need to identify those processes that are most useful to them. Boards should not use a practice just because other boards, experts, or consultants say it is useful. They should ask some key questions: Does the practice fit this board’s circumstances? Does the practice actually help the board reach good decisions? Does the practice contribute to the organization’s success? (Herman & Renz, 2002, pp. 6–7)

In a subsequent review, Renz and Herman (2016) reaffirm their previous expression of caution. They acknowledge that “recent research clearly adds further support for the conclusion that (in at least in some ways), board effectiveness is related to organizational effectiveness” (p. 280). But, they add, “there is much more to learn” (p. 280) and reiterate that “the promise of best practices should be viewed with skepticism” (p. 283). The authors conclude, as in earlier writing, that “the evidence does not support the claim that any particular board and management practices … automatically … [lead] to increased effectiveness for boards and organizations” (p. 283).

The skepticism expressed by Herman and Renz (2002, 2008) and Renz and Herman (2016) about best practices should not be interpreted as saying that boards are unimportant or that the literature on governance has nothing to offer and should be disregarded. Rather, their conclusions are consistent with the philosophy expressed in Chapter 1 of this text: There is often no right answer, and the best way is often pragmatic and eclectic. This includes viewing a problem from multiple perspectives and drawing from various approaches selectively as the situation may dictate.

The Challenge of Nonprofit Governance

Serving as a member of a nonprofit board today is an interesting and challenging assignment. Nonprofit boards are buffeted by strong crosscurrents emanating from virtually all their constituencies. The forces of law, media scrutiny, and more demanding funders are pushing them to do a better job of governance. At the same time, the financial pressures facing many nonprofits in light of diminished government support, increased competition for
philanthropy, and the rising needs and expectations of their clients are leading to greater emphasis on their responsibilities to serve as the organization’s advocates, protectors, and fundraisers. As the brief review in this chapter reveals, the literature of nonprofit governance includes an abundance of advice, but some of it is inconsistent, even contradictory. Today’s boards are being exhorted not only to raise money and promote the organization, but also to be more aggressive in monitoring its performance. They are told to develop independent sources of information about the organization’s operations but to stay focused on the big picture and not meddle in operations, to maintain a clear line between themselves and their CEO but not to forfeit their responsibility for leadership.

Nonprofit boards are expected to be Janus-like—that is, like the Roman god of doorways and arches, who was said to have two faces and be able to look outward and inward at the same time. Nonprofit organizations are open systems, with vaguely defined and often porous boundaries. The board is positioned on that boundary, between the organization and its external environment. From that position, the board is expected to look inward, fulfilling its fiduciary responsibilities on behalf of the membership or society. It is a kind of watchdog, responsible for ensuring that the organization is accountable for the resources entrusted to it, for assuring that those resources are used effectively in pursuit of its mission, and for representing the interests and viewpoints of the owners, whoever they may be.

But board members are also expected to be looking outward in order to meet their responsibilities to the organization itself and advance its interests. This is especially true for boards of charitable nonprofits, which may depend at least in part on philanthropic support. Because they are often leading citizens themselves, board members bring credibility to the organization in the broader community and authenticate its worthiness to receive support. They serve as its ambassadors and advocates, increasing its visibility and reputation within their own social and business circles. They protect the organization against inappropriate intrusions on its autonomy by government or other external forces. Further, they have a responsibility to ensure the organization’s financial strength and sustainability, which many accomplish in part through giving or helping secure financial resources. These dual responsibilities—to society and to the organization itself, looking inward at the same time as looking outward—can sometimes be complex and competing. As Chait et al. (1996) explain,

Boards constantly wrestle with when to be “product champions” and when to be studied neutrals—whether to stand and cheer like rabid partisans when the President of the United States delivers the State of the Union address or to remain seated and stony-faced like the Supreme Court justices. (p. 3)

As Table 4.2 suggests, the complex responsibilities of boards may imply somewhat different ideal qualities in the individuals selected to serve, depending on which set of responsibilities is emphasized—a possible trade-off between what is often called “wisdom” (shorthand for the skills and judgment needed to govern well) and “wealth” (meaning the ability to give or obtain funds and other external resources). To fulfill their fiduciary responsibilities, boards must include individuals of integrity, and at least some will need to have specialized knowledge in finance and perhaps in professional fields related to the organization’s programs and services.

But to advance its reputation, protect its interests, and secure funds, a nonprofit also needs board members who are individuals of stature in their communities, perhaps having influence with governmental officials or other regulators, and who have either the wealth to be significant donors or access to other individuals, foundations, or corporations that can provide financial support. Of course, there may be individual candidates for governing board service who are possessed both of wisdom and of wealth—that is, who are equally well suited to meet their responsibilities for governing the organization and for serving as its external advocates and fundraisers. But not all individuals may be strong in all the requisite qualities.
Boards attempting to craft their membership and faced with selecting a new member to fill an open seat may indeed face a dilemma regarding which qualities should be emphasized (Worth, 2005).

Likewise, in deciding on which issues to focus its limited time and attention, a board may face either-or choices between the tasks associated with governing and those associated with advancing the organization, its interests, and its resources. Today’s environment presents increasing pressure on boards to do all things better—to be better stewards and better fundraisers and to become more engaged with the organization’s planning, programs, and effectiveness while also giving and raising more funds to support its work. The proper trade-offs between wealth and wisdom and how to balance the sometimes competing demands are questions prompting discussion—and some anxiety—in many nonprofit boardrooms today.

<table>
<thead>
<tr>
<th>To society:</th>
<th>To the organization:</th>
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<tr>
<td>Accountability for resources and results</td>
<td>Advocacy and authenticity</td>
</tr>
<tr>
<td>Adherence to mission and law</td>
<td>Protection of autonomy</td>
</tr>
<tr>
<td>Representation of community needs</td>
<td>Fiscal stability and sustainability</td>
</tr>
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**Indicated board member qualities:**
- **To society:**
  - Integrity
  - Expertise on programs and finances
  - Knowledge of community/clients
- **To the organization:**
  - Stature
  - Influence
  - Wealth or access to wealth

**Table 4.2 The Board’s Sometimes Competing Responsibilities**

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**CHAPTER SUMMARY**

The governing board holds ultimate responsibility for the nonprofit organization. There are various types of boards, including those elected by the organization’s membership; self-perpetuating boards; boards appointed by some outside authority; and hybrids, which may include elected, self-perpetuating, appointed, and ex officio members. Each of these types offers advantages but also introduces risks for the organization and the board.

The governing board’s fiduciary responsibilities are defined in law and include the duty of care, the duty of loyalty, and the duty of obedience. Since the passage of intermediate sanctions in 1996 and the Sarbanes-Oxley Act in 2002, there has been increased scrutiny of nonprofit boards by federal and state governments, the media, and other organizations. Under intermediate sanctions, nonprofit board members can face individual penalties for violating their fiduciary responsibilities, and many boards adopted new conflict-of-interest and disclosure policies in response to that legislation.

Although Sarbanes-Oxley applies primarily to publicly traded corporations, many nonprofit organizations have voluntarily adopted some or all of its provisions, and some have been encompassed in legislation passed by states. Independent Sector’s Panel on the Nonprofit Sector issued 33 principles for good governance in 2007.
and a revised version was released in 2015. Some provisions reflect Sarbanes-Oxley–like requirements. Some state associations of nonprofits also have established standards for best governance practice that are used as the basis for accreditation programs. Implementation by the IRS of a revised Form 990 in 2009 further focused the nation’s attention on nonprofit accountability and the responsibilities of boards. Some questions on Form 990 also reflect Sarbanes-Oxley–like principles, which will be considered further in Chapter 6 of this book.

Functional responsibilities of boards have been defined in the literature and include appointing, supporting, and evaluating the CEO; establishing a clear institutional mission and purpose; approving the organization’s programs to ensure consistency with its mission and financial stability; ensuring sound management and financial prudence; ensuring that the organization’s performance will be evaluated. Some people view the boards’ responsibility to ensure the organization’s financial stability and sustainability as implying an obligation on the part of board members to give from their personal resources and actively engage in fundraising. Some boards have policies requiring that members give or raise a minimum amount, but others rely on a culture that encourages members to participate as appropriate to their capacities.

The relationship between the governing board and the CEO is the subject of a substantial literature. In some organizations, especially those managed by a founder, the CEO may be a dominant figure, and the board may be largely reactive to the executive’s initiatives. Most experts call for a partnership between the board and the CEO but differ on how that partnership should be designed. Three experts discussed in this chapter include John Carver (2006), whose policy governance model suggests a clear separation of roles, defined in policies established by the board related to ends, means, board–staff relationships, and governance process. Chatt et al. (2005) propose a model they call “governance-as-leadership,” in which the lines between the responsibilities of the board and the CEO are broken down and both work together in focusing on the most critical issues and questions facing the organization. Leadership is shared, particularly when both engage in generative thinking.

The research of Robert Herman and Dick Heimovics (2005) revealed that in reality both board members and the chief executive see the CEO as primarily responsible for the organization’s success or failure, a condition they call “executive psychological centrality.” They advise CEOs to accept that reality and practice board-centered leadership, not usurping the responsibilities of the board but rather supporting and facilitating its work.

The recommendations of Carver (2006), Chatt et al. (2005), and Herman and Heimovics (2005) are prescriptive, but some scholars have sought to explain why boards are configured and operate the way they do. Some have taken a contingency approach, suggesting that boards are varied according to the internal and external realities that they face.

Responsibility for managing the governing board lies primarily with the chair, working cooperatively with the CEO. In recent years, more boards have established a governance committee, which has responsibility for the overall development of the board, including the enlistment of new members, board member orientation and education, and the evaluation of the board and individual members. Some large organizations with large boards have established a senior staff position to support board activity and the role of the board professional may be an emerging new subspecialty of nonprofit management. However, it is important to remain clear that staff members report to the CEO, not to the board or its officers, and that authority lies only in the full board rather than individual members.

In today’s environment, there is considerable emphasis on the effectiveness of nonprofit governance. A 2017 survey by BoardSource revealed that the majority of nonprofit CEOs were at least somewhat satisfied with their boards’ performance, although the CEOs reported that boards do better in some areas than others. BoardSource and others have identified best practices of effective boards, but research by Herman and Renz (2002, 2008), revisited in later work by the same scholars (Renz and Herman, 2016), suggests that there may be no one right way that works for every organization.

Nonprofit boards today face conflicting pressures. They are expected to do a more effective job of governing but also become more active in generating financial support for the organizations they serve. The appropriate trade-offs between the wealth and wisdom needed to meet these sometimes competing priorities are a matter of current discussion and debate in many nonprofit boardrooms.
Founded in 1901, Sweet Briar College, in Virginia, had provided higher education to generations of women by 2015. With a campus of 3,250 acres in the foothills of the Blue Ridge Mountains, complete with a stable, boathouse, and 18 miles of trails, the college long had enjoyed strong loyalty among its alumni (Stolberg, 2015).

Members of the Sweet Briar community were shocked when the Board of Trustees announced abruptly in March 2015 that the college would be closed at the end of the academic year. Although the college had an $84-million endowment, the board explained that it would not be sufficient to meet the institution’s future financial needs (Anderson & Svrluga, 2015). Enrollment had declined to just 532 students on campus. Much of the endowment was restricted to specific purposes and could not be accessed to meet general operating expenses. The board said there was no other decision that could be reached (Stolberg, 2015).

Opposition to the board’s decision came swiftly from students, faculty, and alumnae. A group of alumnae created a group called Saving Sweet Briar, demanding that the college remain open and that the board and president step down. Some challenged the integrity of the board’s decision, noting that it had amended its bylaws just days before the closure vote to permit a smaller number of trustees to make decisions (“More Scrutiny of Decision to Close Sweet Briar,” 2015). The attorney for the county in which the college was located asked the court to block the closure and appoint a special fiduciary to prevent the existing board and president from misusing the college’s remaining assets (McCambridge, 2015a).

The college had been founded through the will of Indiana Fletcher Williams. Those opposing the closure argued that the board was violating its fiduciary responsibilities under the terms of his will. One court ruled against them on that point, saying that Sweet Briar was in fact a corporation, so the law governing trusts did not apply. That decision was quickly overturned by the Virginia Supreme Court, which ruled that trust law could indeed be applied and sent the case back down to the lower court to handle. However, the Supreme Court’s decision did not resolve the underlying question of whether the board could close Sweet Briar. Meanwhile, what might have been the last commencement had taken place, it was the beginning of summer, and time was running out. Sweet Briar’s faculty and current students did not know whether the college would reopen in the fall or not and no freshmen class had been enrolled for the new academic year (Svrluga, 2015).

The Attorney General of Virginia initiated an effort to negotiate a solution, which the court approved in late June 2015. Under the terms of the court order, all of the current board members resigned and were replaced. Phillip Stone, who had successfully led another college through financial difficulties, was selected to become the new president at Sweet Briar. The court permitted the new board to use $16 million of restricted endowment funds to meet operating costs for the next year (Stolberg, 2015). Alumni pledged $12 million in new resources and announced a campaign to raise an
additional $120 million (Stolberg, 2015). Sweet Briar would live at least for one more year.

The college’s advocates cheered the agreement and the court ruling. The hashtag #SaveSweetBriar was replaced with #WeSavedSweetBriar. But many of the 87 professors had accepted jobs elsewhere and many students also had transferred to other institutions. Some former board members remained convinced that they had made the right decision (Stolberg, 2015). The college’s future remained perilous.

Only 240 students enrolled for the fall 2015 semester and the 2015–2016 academic year was one of budgetary constraint and rebuilding. The efforts to close had been costly, requiring the college to spend $30 million on severance payments to faculty and staff and to meet other obligations. Alumni gave over $10 million in unrestricted gifts, the largest amount in the college’s history, helping to meet the additional costs and permitting the restricted endowment funds to remain untapped (Svrluga, 2016). But there were significant remaining challenges. The curriculum would need to be restructured, in order to better address student and donor interests. Increased fundraising would be essential. And the enrollment would need to grow substantially to make Sweet Briar financially viable over the long run (Locke, 2015). In 2016, one year after the college’s near death, President Stone observed that some people called the saving of the college a “miracle.” He credited the work of alumnae, but also noted that more hard choices would lie ahead (Stone, 2016). Meredith Woo was appointed as president of Sweet Briar in 2017, replacing Stone, and the college announced a significant restructuring of its curriculum and tuition pricing (Biemiller, 2017).

Reflecting on the near closing, lawyer Michael Peregrine notes that the Sweet Briar board was not found to have done anything illegal. Indeed, the court had praised the board’s “principled determination” in reaching its decision to close the college (Peregrine, 2015). Nevertheless, despite the board’s legal actions, “everything blew up” (Peregrine, 2015). What lessons can be learned from that experience by other nonprofit boards? Peregrine (2015) offers several. For one, due diligence matters. The board must be able to prove that it followed a well-structured process in reaching its decisions and it is important for the board to “document everything” (Peregrine, 2015). Boards need to be clear about the law that applies to them, a point illustrated by the confusion about whether trust or corporate law was relevant to the responsibilities of Sweet Briar’s board. Perhaps most significantly, boards cannot expect that their deliberations and decisions will remain within the boardroom. If they make controversial decisions, they will “feel the heat” from stakeholders. Social media will amplify the criticism and quickly engage many more people. Public officials and the courts will not be reluctant to become involved. Given this new environment and the example of Sweet Briar, this likely will not be the last in which a board’s decisions are challenged from outside (Peregrine, 2015).

Questions Related to Case 4.1

1. Although the Sweet Briar College board was not found to have acted illegally, which of the legal responsibilities of boards discussed in this chapter were most relevant to its actions in deciding to close the college?
2. Should the board of Sweet Briar College have taken actions earlier to avoid the financial pressures that led it to consider closure? If so, what actions might the board have considered?
3. Do you think that boards are more likely to face more external scrutiny and pressure regarding their decisions in the future? If so, what accounts for that change?

CASE 4.2 The Hershey Trust

Milton Hershey was the founder of the Hershey Chocolate Company, which is now known as Hershey Foods, the maker of Hershey’s Milk Chocolate, Hershey’s Kisses, and other products with which all Americans are familiar. Hershey and his wife, Catherine, did not have children of their own. In 1909, they founded a school to educate poor male orphans, created a charitable trust to support the school, and appointed nine trustees to manage the trust for the school’s benefit. In 1918,
after his wife’s death, Hershey gave his entire personal fortune, consisting mostly of stock in the company, to the Hershey Trust to support the Milton S. Hershey School. The school today enrolls a diverse student body of about 2,000 low-income young men and women on a residential campus in central Pennsylvania. The students do not pay tuition or other fees, since the trust receives revenue from its interest in the food company each year to support the school’s operation (Milton S. Hershey School, 2014).

By 2001, the Hershey Trust had grown to over $5 billion, most of which was stock in Hershey Foods. Indeed, the charitable trust owned a controlling interest in the company, and company stock was 56 percent of the trust’s assets (Gadsden, 2002). With 6,200 employees, the company was the largest employer in its hometown of Hershey, Pennsylvania (Scully, 2009).

However, in 2002, the trustees of the Hershey Trust were concerned by the lack of diversification in the trust’s investments and by the increasing competition from other companies. Fearing that the food company’s decline could endanger the school’s future, they proposed selling the trust’s controlling interest. Wrigley, best known for its chewing gum, was prepared to buy it for $12.5 billion (McCracken & Brat, 2009).

The Hershey, Pennsylvania, community strongly objected to the sale, fearing the loss of jobs and a negative impact on the local economy. Under Pennsylvania law, the state attorney general oversees charitable trusts. The attorney general at the time, Mike Fisher, sided with the community and petitioned the state court to block the sale, arguing that it “could have profoundly negative consequences” for the Hershey region. The court agreed, and the sale was stopped. The Pennsylvania legislature later passed a law affirming the court’s decision (Larkin, 2002). Some argued that the attorney general and the court had overstepped their authority and had dangerously altered the law regarding the fiduciary responsibilities of charitable trustees. They might now be required to make their decisions not only in light of the interests of the trust’s beneficiaries, but also in consideration of local political and economic pressures (Larkin, 2002).

The food company’s position continued to decline after 2002. By 2009, Hershey Foods had suffered years of stagnating revenue and a slumping stock price, which reduced the assets of the trust and thus the revenue of the school. In addition, a wave of mergers in the food industry was presenting increased competition from large multinational producers. Meanwhile, Hershey was finding it difficult to grow its business outside of the United States and derived only 10 percent of its revenue from overseas (Wachman, 2009).

The food industry was consolidating. Mars merged with Wrigley in 2008 and, in 2009, Kraft made a bid to take over the famous British candy brand, Cadbury (Scully, 2009). The trustees of the Hershey Trust were deeply concerned by this new challenge to Hershey Foods. They knew the law would not permit them to sell the company, but they considered making an offer to buy Cadbury. Kraft had offered $16.5 billion for Cadbury, and Hershey would need to offer more. Hershey was only half the size of Cadbury and a fraction of Kraft’s size. Buying Cadbury would require borrowing massive amounts of money. It was reported that differences arose between the views of the company’s board and management, on the one hand, and the board of the charitable trust, on the other. The company’s board and management were concerned that such borrowing would cause the company’s credit ratings and stock price to decline, raise the cost of future borrowing, and hurt profits. The charitable trustees were concerned that failing to buy Cadbury would mean that Hershey would find it even more difficult to compete internationally in the future and that the long-term interests of the trust and the school would be jeopardized (Wachman, 2009).

Throughout January of 2010, there was daily speculation in the financial media about a possible Hershey counteroffer for Cadbury. But, on January 22, Hershey announced that it would not proceed and Kraft announced that Cadbury had accepted its revised offer of 11.9 billion British pounds ($19.4 billion). Kraft and Cadbury combined would become the largest candy company in the world (“Hershey Loses Taste for Cadbury,” 2010). But this was not the end of the story—neither for the Hershey Trust nor for the food industry.

In 2012, Kraft decided to split its company into two, spinning off its snack business under the new corporate name Mondelēz International (Strom, 2012). The industry remained competitive in the following years. By 2016, Mondelēz was under pressure from investors to do something that would increase its profitability (Berk, 2016). The stock of Hershey Foods was much higher than it had been in 2002. The assets of the charitable Hershey Trust had reached $12 billion (Fouad, 2016) and its income from its holdings in the chocolate company totaled $160 million every year (Solomon, 2016). But the food company’s performance had lagged since 2013 and there were once again reasons for the company and the Trust to be concerned...
Questions Related to Case 4.2

1. Why might the board of Hershey Foods and the trustees of the Milton S. Hershey Trust sometimes hold different views and priorities? To whom and for what are they responsible?

2. Should boards of nonprofits be concerned only with following the intention of donors and serving the interests of those who directly benefit from the nonprofit’s assets, or should they also consider the impact of their decisions on local communities?

3. What concerns might the trustees of the Milton S. Hershey Trust have held about their own legal responsibilities throughout the events described in the case? In other words, which laws might potentially have created liability for members of that nonprofit board?
QUESTIONS FOR DISCUSSION

1. If you were a nonprofit CEO, how would you describe the ideal board for which to work?

2. If you were the chair of a nonprofit board, how would you describe the ideal relationship between the board and the CEO from your perspective?

3. Should boards be held responsible for the results achieved by the organizations they govern or is that primarily the responsibility of the CEO and staff?

NOTES

1. Reprinted with permission from 12 Principles of Governance That Power Exceptional Boards, a publication of BoardSource ©2018. For more information, call 1-877-892-6273 or e-mail learningcenter@boardsource.org.

2. Governance issues at the Hershey Trust have been discussed extensively in articles in the Philadelphia Inquirer (http://www.philly.com/), the Chronicle of Philanthropy (www.philanthropy.com), and a book (Fernandez, 2015).

3. The food industry remained dynamic in 2017, when it was reported that Hershey Foods might consider a bid to buy Nestle’s U.S. confectionary business (Hirsch, 2017). In December 2017, Hershey bought Amplify Snack Brands (LaMonica, 2017). Students interested in events that may have unfolded after this case study was written will find articles on the Web. They may find it interesting to consider such events in light of the governance structure and other issues discussed in this case study.

APPENDIX CASES

The following cases in the Appendix of this text include points related to the content of this chapter: Case 1 (New York City Opera); Case 4 (The Girl Scouts of the United States of America).

SUGGESTIONS FOR FURTHER READING

Books/Reports


Websites

Association of Governing Boards of Universities and Colleges: http://www.agb.org/

BoardSource: http://www.boardsource.org/

Daring to Lead: http://daringtolead.org/

Independent Sector: http://www.independentsector.org/
The deep commitment of a leader, as evidenced by his or her willingness to sacrifice and suffer for the cause, confers a charismatic appeal. Clara Barton founded the American Red Cross and led the organization for 23 years.

Chapter Outline

The CEO's Job
Management and Leadership
Overview of Leadership Theories
  An Evolution in Thinking
  Transformational Leadership
  Charismatic Leadership
The Effective Nonprofit CEO
  Focus on Mission
  Focus on the Board
  Focus on External Relationships
  Share Leadership and Empower Others
  Focus on Key Roles and Priorities
  Use the “Political Frame”
  Right Person, Right Place, Right Time
Founder Syndrome
Executive Transitions
Leading Change
Chapter Summary
Note