



MEMORANDUM

To: Committee for Purchase From People Who Are Blind or Severely Disabled

From: Melwood

Re: Requests for Comments on 41 CFR Parts 51-2, 51-3, and 51-4  
Nonprofit Agency Governance and Executive Compensation

Date: January 25, 2006

In addition to Melwood's public testimony presented by the Chairman of the Board, Douglas Lemmonds, at the January 12, 2006 hearing, we submit the following comments in response to the Committee's proposed standards and questions as published in the Federal Register (and reprinted verbatim below in bold type).

Good Governance Standards Suggested by the Committee

**(1) The board of directors (the board) should be composed of individuals who are personally committed to the mission of the organization and possess the specific skills needed to accomplish the mission.**

*Melwood concurs.*

**(2) Where an employee of the organization is a voting member of the board, the circumstances must insure that the employee will not be in a position to exercise "undue influence."**

*Melwood recommends that no employees of the organization be allowed to serve as voting members of the board.*

**(3) The board should have no fewer than five unrelated directors. Seven or more directors are preferable. The board chairperson should not also be serving as the nonprofit agency's CEO/President.**

*Concur.*

**(4) The organization's bylaws should set forth term limits for the service of board members.**

*Concur.*

**(5) Board membership should reflect the diversity of the communities served by the organization.**

*Concur.*

**(6) Board members should serve without compensation for their service as board members. Board members may be reimbursed only for expenses directly related to carrying out their board service.**

*Concur.*

**(7) The full board or some designated committee of the board should hire the executive director, set the executive's compensation, and evaluate the director's performance at least annually. In cases where a designated committee performs this responsibility, details should be reported to the full board.**

*Concur.*

**(8) The board should periodically review the appropriateness of the overall compensation structure of the organization.**

*Concur.*

**(9) The full board should approve the findings of the organization's annual audit and "management letter" and approve a plan to implement the recommendations of the management letter.**

*Concur.*

**(10) Nonprofits should have a written conflict of interest policy. The policy should be applicable to board members and staff who have significant independent decision-making authority regarding the resources of the organization. The policy should identify the types of conduct or transactions that raise conflict of interest concerns, should set forth procedures for disclosure of actual or potential conflicts, and should provide for review of individual transactions by the uninvolved members of the board of directors.**

*Concur.*

**(11) The accuracy of the agency's financial reports should be subject to audit by a Certified Public Accountant. The board of directors should have at least one financial expert serving.**

*Concur.*

**(12) Nonprofit agencies should periodically conduct an internal review of the organization's compliance with existing statutory, regulatory and financial reporting requirements and should provide a summary of the results of the review to members of the board of directors.**

*Concur.*

**(13) Nonprofit agencies should prepare, and make available annually to the public, information about the organization's mission, program activities, and basic audited (if applicable) financial data. The report should also identify the names of the organization's board of directors and executive management staff.**

*Concur.*

**(14) Executive compensation paid to the Chief Executive Officer (CEO)/President and "highly compensated individuals" must be monitored by the board of directors. The full board should approve all compensation packages for the CEO/President and all highly compensated employees through a "rebuttable presumption" process to determine reasonableness.**

*This standard is redundant. The subject is sufficiently addressed in Standards #7 and #8.*

#### Questions by the Committee Regarding Good Governance

**(1) Are these criteria comprehensive and inclusive enough to effectively evaluate that a nonprofit agency demonstrates good governance practices and should be deemed qualified to participate in the JWOD Program?**

*Yes.*

**(2) Are there additional criteria that should be used, or substituted for the above, to evaluate evidence of good governance practices by nonprofit agencies in the Program?**

*As previously stated, Melwood believes that Standards #7 and 8 are sufficient measures for good governance on compensation policies and thus, an additional Standard (#14) is not necessary.*

**(3) Should accreditation by one or more state or national organizations be recognized as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee?**

*Melwood would support CARF accreditation as a measure of good governance. Adding another layer of accreditation or other type of accountability process would be burdensome and not add any measurable value to our mission. Melwood recommends that the Committee work with CARF to ensure that CARF standards will embrace all of the Committee's expectations for good governance practices.*

**(4) Should different benchmarks be used for nonprofit agencies that are state, county, or local government agencies, or should they be exempt from any Committee regulations in this area?**

*No opinion.*

**(5) Should the size and/or the annual revenue of the nonprofit agency be a factor or factors in assessing appropriate governance practices?**

*No opinion.*

**(6) What is the best way to ensure that only qualified central nonprofit agencies and nonprofit agencies, with an internal structure that minimizes opportunities for impropriety, participate in the JWOD Program?**

*Melwood recommends that the Committee hold all JWOD-related agencies accountable to standards for good governance.*

**(7) What if any enforcement mechanisms should be adopted to ensure only the qualified central nonprofit agencies and nonprofit agencies participate in the JWOD Program?**

*No opinion.*

**(8) What steps will the nonprofit agencies and central nonprofit agencies need to take to avoid conflicts of interest among its board members?**

*Standard #10 (above) already addresses this issue.*

**(9) What steps will the nonprofit agencies and central nonprofit agencies have to take to demonstrate financial responsibility?**

*Standards #1, 8, 9, 11, and 12 (above) already address this issue.*

Questions by the Committee Related to Executive Compensation

**(1) What is the threshold beyond which the compensation paid to the executives in a JWOD-participating nonprofit agency should be considered as influencing a proposed fair market price determination? For example, if the agency receives more than a certain percentage of its total revenue from sales through the JWOD Program, is there a compensation level (total dollars paid or total dollars paid as a percentage of total revenue) at and above which fair market price impact would be deemed to occur?**

*We do not agree with the premise of these questions. Any agency that pays executive compensation in such a way that it becomes unable to compete at fair market prices, or negatively impacts fair market prices, is not practicing good governance. Therefore, the issue comes back to the aforementioned standards and questions raised by the Committee regarding good governance.*

**(2) Conversely, is there a point below which executive compensation, regardless of the dollar amount paid, would not be considered as influencing a recommended fair market price? Is such a de minimis test appropriate for large diversified nonprofits where total JWOD sales represent only a small percentage of total revenue?**

*Similar to our response to Question #1, JWOD-related agencies need to establish responsible compensation policies for its executives and its entire staff based on all relevant criteria, including an agency's ability to compete at fair market prices.*

**(3) Without regard to any analysis of JWOD-related revenue, is there an established benchmark or absolute dollar threshold above which compensation would be deemed as influencing a proposed fair market price?**

*No. In any situation where compensation is negatively influencing fair market pricing, an agency's compensation policies need to be revisited.*

**(4) Should receipt of documentation to support a "rebuttable presumption of reasonableness" serve to demonstrate that executive compensation does not by itself influence a proposed fair market price or any adjustment thereto?**

*As stated above, Melwood subscribes to the standard of good governance that "the Board should periodically review the appropriateness of the overall compensation structure of the organization." We believe this is a sufficient standard of accountability.*

**(5) To what extent should there be a relationship between the pay and compensation of line workers and highly compensated individuals?**

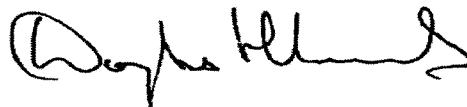
*Same response as to Question #4.*

**(6) At what point would be appropriate to begin a review of an executive compensation package even if the proposed price for a product or service would fall within a range that it could be considered as a fair market price?**

*Melwood believes it is the responsibility of its Board to "periodically review the appropriateness of the overall compensation structure of the organization" (language from Standard #8 above). As an oversight measure, the Committee should request a statement from the Board attesting to this compliance matter.*

**(7) What approaches are available to identify (sic) and monitor nonprofit agencies executive compensation that would provide such information to the Committee routinely but without placing an undue burden on agencies?**

*We recommend adherence to good governance practices as enumerated above. Furthermore, the Committee should annually review an agency's IRS Form 990 and any other agreed upon compliance measures such as CARF accreditation.*



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Douglas Lemmonds  
Chairman of the Board  
Melwood



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