REVISE THE 45-DAY NOTICE

The 45-day notice should be withdrawn and then revised. The primary reasons are that CEO evaluation will be eliminated by the 45-day notice; the proposed compensation committee will have inherent conflicts of interest; and the current Appraisal Institute Bylaws do not address the compensation process for the CEO or Executive Committee. A stated purpose of the 45-day notice is to codify compensation, so the opportunity exists to also codify policies for all evaluation and compensation. In other words, revise the 45-day notice to address all evaluation and compensation issues, not just for the CEO.

Potential Conflicts of Interest

The 45-day notice states the compensation committee will consist of the President, the President Elect, the Vice President, the Immediate Past President, the most recent Past President and one board member who will be elected for a one year term.

But the 45-day notice later states under Section 1 Executive Committee a) Composition: "There shall be an Executive Committee composed of the elected officers (President, President Elect, Vice President and Immediate Past President) and the Chief Executive Officer, who shall serve as a nonvoting member." Then it states that "The Executive Committee shall report to the Board of Directors and shall:

> 1) monitor implementation of strategic and operating plans and take appropriate actions to advance such implementation;
>
> 2) develop and monitor relationships with external parties consistent with the directives and policies of the Board of Directors;
>
> 3) "advise **and** counsel ~~and evaluate~~ the Chief Executive Officer;
>
> 4) perform such other duties as may be assigned to it by the Board of Directors."

Hence, the proposed 45-day notice advocates that the officers, most recent Past President and one elected board member will recommend CEO compensation while the existing officers and the CEO will advise and counsel the CEO. The separation of these functions does not make sense. Compensation should consider the performance evaluation. But the 45-day notice indicates the compensation committee will not be involved in the "advice and counsel" of the CEO. So if the evaluation is cast aside, the CEO could do an outstanding or poor job but the compensation committee (and board of directors) will be unaware of this. Yet the board is ultimately responsible for determining the performance of the CEO. Without performing an evaluation, how will the compensation committee determine compensation and how does the board judge goals set and met?

What is reasonable compensation according to the IRS?

> The IRS recommends that non profits follow its three-step process to determine that compensation is reasonable and not excessive. (See also Treas. Reg. § 53.4958-6(a))
>
> The board should arrange for an **"independent body" (which means that the person receiving the compensation should not be part of the review process)** to conduct a "comparability review." Many non profit's task a "compensation committee," or use their executive committee, or another sub-group/task force of board members, for this purpose.
>
> The independent body should take a look at "comparable" salary and benefits data, such as data available from salary and benefit surveys, to learn what nonprofit employers with similar missions, and of a similar budget size, that are located in the same, or a similar geographic region, pay their senior leaders.
>
> The board/independent body that is conducting the review should document who was involved, (**and their "independence," i.e., that they do not receive compensation from the nonprofit) and the process used to conduct the review, as well as the disposition of the full board's decision to approve the executive director's compensation (minutes of a meeting are fine for this).** The documentation should demonstrate that the board took the comparable data into consideration when it approved the compensation.

Thus, IRS best practices clearly show the compensation committee should be independent. AI officers are compensated by AI, and the officers who receive salaries from AI will have a majority voting block for CEO compensation. Thus, they fail the "independence" test, since four of the six committee members receive compensation from AI.

CEO Evaluation

A problematic element of the 45-day notice item is found in Section 1, b) 3) which states: "advise **and** counsel ~~and evaluate~~ the Chief Executive Officer." The phrase "and evaluate" the CEO has been replaced with "counsel." This implies that no evaluation will be performed by the Executive Committee or the compensation committee prior to authorizing compensation.

Performance reviews for employees are required for virtually all for profit and nonprofit organizations. As noted previously, best practices include codifying the "process used to conduct the review" (see attached *Professional Appraisal Process for the CEO)*. If an evaluation was formerly required, and most entities perform employee evaluations, what has changed for the Appraisal Institute to eliminate the evaluation of the CEO and then codify this? If the CEO is not performing at desired levels and there is no evaluation, this creates risk in the event the board wants to terminate the CEO because there will be no evaluation documentation. Similarly, if a board decides to fire the CEO but the evaluations performed reflect positive performance, legal risk from termination will preclude this action. But with no evaluation, it could proceed. Because of these elements, CEO evaluation is in the best interest of both AI and the CEO. There are no comments that accompany the 45-day notice so the rationale to eliminate the evaluation is not known. The board needs to explain to the members why the CEO evaluation should be stopped, especially since best

practices indicate the evaluation process should include initial goal setting by both the CEO and the evaluation committee, followed by year-end evaluation regarding goals met.

Interestingly, the CEO will participate in the "advise and counsel" for the CEO. This lack of independence is not credible. IRS best practices for a nonprofit state that the compensation/evaluation committee should conduct business **WITHOUT** the presence of the CEO, as it is often difficult to speak frankly under this scenario. The process for CEO evaluation should also be codified.

Expand 45-Day Notice to Address All Compensation

The word "compensation" appears once in the Appraisal Institute Bylaws and does not refer to compensation for the CEO or Executive Committee. The entire process for determining evaluation/compensation should be codified in the Bylaws. Since a compensation committee is being created anyway with practices codified, it should take the next step to include compensation and evaluation for the officers. Do the officers currently vote with the board to set their own salaries? Is a board vote on compensation taken or does the CEO determine compensation? These elements are not defined in the Bylaws, so how this occurs is unknown to the dues-paying membership. The process and methods for determining compensation should be codified, the same as is being proposed for the CEO compensation/evaluation. The salaries and basis for determination of compensation for our nonprofit organization should be known by the members who pay the dues, and this does not exist in the current bylaws.

Conclusion

The unclear portions of the 45-day notice require revision to be clear for future boards of directors. The AI board of directors is ultimately responsible for CEO evaluation and compensation, and will be responsible if the 45-day notice is passed and found to be in violation of guidelines. IRS guidelines indicate people who receive compensation from a non profit should not be involved in setting compensation, but the 45-day notice recommends this. The 45-day notice eliminates the requirement for CEO evaluation, which historically has been conducted in the presence of the CEO. What elements have changed to require elimination of the evaluation? An evaluation is critical to ensure organization goals are met, to comply with employment laws, for compensation consideration and for the health of the organization. The evaluation and compensation process is not codified in the Bylaws. Given these elements, the 45-day notice should be withdrawn and revised to reflect best practices as promulgated by the IRS and Council of Non Profits to codify the entire evaluation and compensation process. The board should elect the compensation/review committee and/or membership should elect an evaluation/compensation committee in a manner similar to the National Nominating Committee, with one member from each region. These members are not compensated by AI (except for expense reimbursement), and hence meet the independence test of the IRS.

References

45-Day Notice of Proposed Amendments to Appraisal Institute Bylaws January 11, 2021

https://www.councilofnonprofits.org/tools-resources/executive-compensation

https://www.simonejoyaux.com/downloads/CEOAppraisalTool.pdf

https://insights.diligent.com/compensation-committee/the-role-of-the-compensation-committee/

https://www.irs.gov/pub/irs-pdf/i990.pdf

Appraisal Institute Bylaws and Regulation No. 7

JOYAUX ASSOCIATES www.simonejoyaux.com | Simone P. Joyaux, ACFRE

Performance Appraisal Process for the CEO[1]

Note: This process and appraisal tool – along with Joyaux' CEO job description – applies, in general to any organization. You would change references to "organization" to your agency's name. You would likely specific the type of mission-based information to know, e.g., environment, healthcare, etc.

Importance of performance appraisal

Performance appraisal / evaluation is the regular process of both formally and informally providing feedback about an individual's implementation of his / her responsibilities. The position being evaluated may be a paid employee or a volunteer.

All employees deserve and expect ongoing feedback, whether formal or informal. And all employees should expect a formal appraisal, conducted annually by the supervisor. (And, in general, the same holds true for volunteers.)

The appraisal process begins first with the job description. Supervisor and employee must be clear about the responsibilities, scope of authority and limitations, and standards and expectations of each job.

The process is clearly explained to all, is transparent, and is executed in a timely matter. In addition to written materials, dialogue between supervisor and employee is critical.

Self-appraisal is an important component of the process. Each employee completes a self-evaluation, using the Performance Factors Tool, which reflects the job description. This is the same tool used by the supervisor. The supervisor considers the employee's self-evaluation during the review of performance.

At the conclusion of the process, the forms are filed in the employee's file. The previous year's results are used for the new year's evaluation.

The formal performance appraisal for all employees is conducted during the same timeframe. The appraisal results form the basis for merit increases. Merit increases are formulated during the budgeting process and institute at the beginning of the fiscal year.

The CEO assures proper and timely appraisal for all organization employees. The CEO is responsible for an effective process that retains and supports the best employees, and provides appropriate intervention with those requiring improvement.

Elements of the performance appraisal process

The appraisal process facilitates a careful review of the following for each employee:

- Accomplishment of goals for the review period (Section 1)
- Performance on key responsibilities in the job description (Section 2)
- Additional performance/management factors (Section 2a)
- Goals for upcoming review period with ample input from supervisor and incumbent (Section 3)

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[1] CEO, the chief executive officer, is the principal staff person of the organization. This position is often called executive director. And sometimes, in larger institutions, the position is called President and CEO. No matter the title, the lead staff person is the CEO.

- Performance improvement plan that is set jointly with the supervisor and employee[2], with monitored target dates as needed (Section 4)
- Development plan that is set jointly, and includes monitored target dates (Section 5)
- Potential for advancement to greater responsibilities

CEO performance appraisal process

A committee[3] or ad hoc task for of the Board of Directors manages the performance appraisal process of the CEO and conducts the performance appraisal interview.

Typically, the Chair of the Board establishes this task force or committee. Considerations for the task force include: experience with the CEO including chairing a committee, working on a project; someone with HR expertise; possibly experience managing a nonprofit.

Oftentimes the Board Chair serves on the task. It's also useful to include the incoming Board chair, if that person has been identified.

To assure continuity, at least two members of the task force who participated in the immediate prior year review should participate in the process in the subsequent year. To assure new perspective, at least two of the members of the task force should change every year or two.

The task force must remember that it works on behalf of the Board. The task force can neither assume – nor can the Board delegate – its authority regarding the CEO. The total Board serves as the evaluator and final arbiter of any issues related to performance of the Executive Director.

Task force responsibilities

- Draft and secure Board approval for the CEO job description[4]. Design the CEO Performance Appraisal Process, including the various tools. Then recommend to the Board for discussion and action. The Board formally approves the process and tools.[5]
- Initiate the formal Performance Appraisal Process, typically 2 – 3 months prior to the start of the new fiscal year. This time period allows completion of the appraisal process, format review and action by the Board of Directors, meeting with the CEO, and then budget action.
- Recommend a merit increase to the Board in concert with the Finance Committee following the annual performance appraisal.

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[2] In the case of the CEO, this work is typically done by an ad hoc performance appraisal task force or some other Board committee, e.g. Personnel Committee or Executive Committee.

[3] Most personal work belongs to management and does not warrant a Board Personnel Committee. I see this more as an hoc task force for a period of time that sunsets.

And since I'm on a worldwide mission to destroy all Executive Committees, no such body would exist to conduct the performance appraisal process for the CEO.

To make this more complicated, the CEO has no "supervisor." The Board provides general direction and oversight to the CEO, within the scope of authority and limitations of good governance. The Board works diligently to focus on governance and avoid management. Most specifically, the Board chair is not the CEO's supervisor.

The CEO is hired, appraised, and if necessary fired by the Board. The Board authorizes a task force or committee to carry out the appraisal process and bring the report back to the Board for action.

[4] See sample at www.simonejoyaux.com. Click on Resources and then Free Library. Once established, the job description and appraisal process would likely benefit from a formal review every 3 – 5 years. Naturally, during the appraisal process, the task force may identify areas of job description (and hence appraisal process) that need change. Such changes should be discussed with the CEO and require Board action.

[5] In other words, your Board would approve this document – which outlines the process and provides the tool.

- Review and endorse the CEO's Annual Goals and Professional Development Plan and inform the full Board.
- Based on periodic compensation analyses, recommend (in concert with the Finance Committee) a salary and benefits adjustment to the Board for action.
- Regularly review the job description, any relevant policies, and the appraisal process – and recommend enhancements for review and action by the Board as necessary.

Steps in the CEO performance appraisal process

1. Task Force reviews Performance Appraisal Process, informs the Board of the process start, and invites Board members to provide any comments to the task force.
2. CEO completes same tool and submits to task force.
3. Task force meets and conducts appraisal process – Sections 1 – 4, comparing results to CEO self-appraisal.
4. Task force prepares final forms and then drafts a cover memo for Board review and action. The task force memo summarizes strengths and weaknesses, goals, improvement and development plans, and recommends the overall performance status.
5. The task force sends the confidential memo to each Board member – and convenes an executive session[6] of the Board to discuss the results and recommendations. The Board discusses the appraisal memo and merit recommendation – and makes changes as it desires. The Board then acts and minutes reflect action and are filed in the permanent record.
6. The task force (or a representative thereof) then meets with the CEO to discuss the results of the appraisal process, and the resulting Board decision. The CEO comments on the Goals for the new year, may suggest modifications, and then helps outline the Performance Improvement and Development Plans.

Performance appraisal ratings

- **Exceeds expectations** – The individual is making an exceptional, significant contribution to the organization. This person constantly accepts responsibilities beyond those of the job held and continuously exceeds expectations regarding completion of work assignments. There are few areas regarding performance of job responsibilities in which she could improve.

- **Meets expectations** – The individual is a steady, consistent, dependable performer and carries out duties in a fully responsible and effective manner. Meets and occasionally exceeds expectations regarding job responsibilities and completion of work assignments. Even though present performance is acceptable, there may be areas regarding performance of job responsibilities in which the person should improve.

- **Needs improvement** – The individual falls below standards or expectations. It is expected that with the appropriate improvement plan, performance will reach a fully satisfactory level within a specified time period.

[6] Recusal of staff, including the CEO.

CEO name: _____

Date hired: _____ Current evaluation period _____

Date evaluation completed _____ Date of Board action _____

Section 1: Achievement of goals from last review period

Use ratings described on page 2 of this document: EE, ME, NI. When using NI, please give specific example(s) below the goal statement.

Goals (Type in the agreed-upon goals decided during the last review period, as specified in Section 3. Include any commented below the goal statement.)	**Rating**

Comments and overall evaluation for achievement of annual goals – EE, ME, BE, IIR

Section 2: Performance on key responsibilities of the job description: *Use ratings described on page 2 of this document: EE, ME, NI. When using NI, please give specific example(s) below the goal statement.*

Responsibility	Rating
Legal and regulatory compliance	
1. Files legal and regulatory documents and complies with relevant laws and regulations.	
Mission, policy, planning	
2. Helps Board determine values, mission, vision and goals.	
3. Helps Board monitor and evaluate organization's relevancy, effectiveness, and results.	
4. Keeps Board fully informed re: organization's condition and all important factors influencing it.	
5. Keeps informed of developments in the organization's mission area, general business management including the nonprofit focus, governance, philanthropy and fund development.	
6. Assures that appropriate policies are in place to guide the organization's work in all areas.	
Management, administration	
7. Provides general oversight of all agency activities, manages day-to-day operations, and assures a smoothly functioning, efficient organization.	
8. Assures program quality and organizational stability through development and implementation of standards and controls, systems and procedures, and regular evaluation.	
9. Assures a work environment that recruits, retains and supports quality staff and volunteers.	
10. Assures process for selecting, developing, motivating, and evaluating staff and volunteers.	

Responsibility	Rating
11. Recommends staffing, compensation, and financing to Board. Recruits personnel, negotiates professional contracts, and assures development and maintenance of appropriate salary structures.	
12. Specifies responsibilities and accountabilities for personnel; evaluates performance regularly.	
Governance	
13. Works effectively with Board, its officers and committees to define their roles and responsibilities; helps evaluate their performance regularly.	
14. Works with Board Chair to enable Board to fulfill its governance functions and manages Board's due diligence process to assure timely attention to core issues.	
15. Works with Board Chair to focus Board attention on long-range strategic issues.	
16. Works with Board officers and committee chairs to get best thinking and involvement of each Board member & to stimulate each Board member to give his / her best.	
17. Frames significant questions and complex issues in ways that facilitate Board dialogue and action.	
18. Recommends volunteers to participate in the Board and its committees.	
Finance	
19. Promotes programs and services that are produced in a cost-effective manner, employing economy while maintaining an acceptable level of quality.	
20. Oversees the fiscal activities of the organization, assures adequate controls.	
21. With Board, ensures financing to support goals, including effective fund development program.	
22. Fosters a culture of philanthropy, and assures a donor-centered organization that nurtures loyalty through a comprehensive relationship-building program.	

Responsibility	Rating
Philanthropy and fund development	
23. Assures an effective fund development program by serving as the chief development officer or hiring and supervising an individual responsible for this activity.	
24. Assures a comprehensive gift management system, analysis and reporting to support quality decision-making.	
25. Assures the availability of materials to support solicitation.	
26. Provides leadership in developing and implementing the organization's fundraising plan and monitoring the plan's progress.	
27. Helps ensure that Board members carry out philanthropy and fund development activities.	
28. Participates actively in identifying, cultivating and soliciting donor prospects.	
Relationship building	
29. Identifies the key relationships necessary to support an effective organization and assures proper planning, relationship building and communications to develop and maintain these.	
30. Facilitates the integration of the organization into the fabric of the community by assuring the use of effective marketing and communications activities.	
31. Acts as an advocate, within the public and private sectors, for issues relevant to ABC, its services and constituencies.	
32. Listens to clients, volunteers, donors and the community in order to improve services and generate community involvement. Assures community awareness of the organization's response to community needs.	
33. Serves as agency's chief spokesperson and acts as advocate for issues relevant to the agency.	
34. Listens to s stakeholders in order to improve services and generate community involvement.	

Responsibility	Rating
35. Works with legislators, regulatory agencies, volunteers and representatives of the nonprofit sector to promote legislative and regulatory policies that encourage a healthy community and address the issues of the organization's constituencies.	
Leadership	
36. Demonstrates initiative and creativity in identifying and addressing strategic issues facing the organization.	
37. Effectively manages continuity, change and transition.	
38. Sets and achieves clear and measurable goals and reasonable deadlines.	
39. Deals effectively with demanding situations and designs and implements effective interventions.	
40. Consistently displays integrity and models the organization's values.	

As appropriate, additional factors not in job description:

Section 3: Goals for the next review period

Section 4: Performance improvement plan: *Outline any areas where the CEO needs improvement to reach higher levels of performance.*

Section 5: Development plan: *Outline training / development that will enhance CEO's contribution to the organization. Also specify areas of support and action that the Board can do to help the CEO.*

Overall performance rating / comments for CEO for this evaluation period

Action and approvals

Performance appraisal results (through memo) acted on by Board of Directors on: _____

Authorizing signature / date from Performance Appraisal Task Force: _____

CEO signature and meeting date: _____

Please write any comments from CEO on the other side of these pages.