

The Digital MBA in Management

Management Consulting Executive Handbook

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The efficient and effective operation of a business, and study of this subject, is called management. The main branches of management are financial management, marketing management, legal and regulatory management, leadership, human resource management, strategic management, production management, operation management, service management and information technology management.

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Marketing

What Is Marketing?

General Definition

In plain and simple terms, marketing activities and strategies result in making products available that satisfy customers while making profits for the companies that offer those products. That's it in a nutshell!

Marketing produces a win-win situation because:

- Customers have a product that meets their needs and
- Healthy profits are achieved for the company. (These profits allow the company to continue to do business in order to meet the needs of future customers.)

Stated another way, focus on what the customer wants is essential to successful marketing efforts. This customer-orientation must also be balanced with the company's objective of maintaining a profitable volume of sales in order for the company to continue to do business. Marketing is a creative, ever-changing orchestration of all the activities needed to accomplish both these objectives.

How Are The Customer And Business Objectives Met?

The American Marketing Association's definition of marketing is: the process of planning and executing the conception, pricing, promotion, and distribution of ideas, goods, and services to create exchanges that satisfy individual and organizational objectives.

You see in the above definition that the process of marketing begins with discovering what products customers want to buy. Providing the features and quality customers want is a critical first step in marketing. You'll be facing an uphill battle if you provide something you want to produce and then try to convince someone to buy it.

The marketing process continues with setting a price, letting potential customers know about your product, and making it available to them.

What Activities Are Included In Marketing?

Marketing activities are numerous and varied because they basically include everything needed to get a product off the drawing board and into the hands of the customer. One look at our Marketing Mall Directory shows that the broad field of marketing includes activities such as designing the product so it will be desirable to customers, using tools such as marketing research and pricing, and promoting the product so people will know about it, using tools such as public relations, advertising, marketing communications, and exchange with the customer (through sales and distribution).

It is important to note that the field of marketing includes sales, but it also includes many other functions. Many people mistakenly think that marketing and sales are the same -they are not.

How Does Marketing Fit into the Company?

Another way to describe marketing activities is to consider the big picture of how they fit in with the other business functions.

Through marketing efforts, decisions are made and strategies are implemented concerning:

- What products (goods, services or ideas) are to be offered
- To whom (the target market)
- How (how to inform potential customers of the offering, how to make the transaction, etc)

Products are created through production efforts. Capital and operating funds are managed and tracked in the accounting-finance area; the focus of the human resources area is employees and the policies concerning them. Oftentimes, a marketing approach relies upon the coordination of several business areas to be successful. For example:

- The product might need some tweaking by producer of the product to respond to customer complaints.
- The person who handles human resource issues might be asked to develop compensation plans that reward sales people who build significant relationships that have tremendous potential, but are slow to close.
- Special payment plans might need to be implemented by the accounting staff to accommodate a variety of customer needs.

As a result, marketing usually crosses more departmental boundaries out of necessity than other business functions do. Marketing requires the orchestration of everyone who plays a part in the common goal of pleasing the customer. For a small business owner who has no employees, this means that he/she needs to mentally tear down the walls between varied business functions and think holistically when it comes to marketing strategies.

In Summary

These are the fundamentals of a true marketing mindset:

- Producing what the customer wants should be the focus of business operations and planning.
- Creating profitable sales volume, not just sales volume, is a necessary goal.
- Coordinating between marketing activities and all other functions within a business that affect marketing efforts is a must. ⁱ

Marketing Basics

To succeed, entrepreneurs must attract and retain a growing base of satisfied customers. Marketing programs, though widely varied, are all aimed at convincing people to try out or keep using particular products or services. Business owners should carefully plan their marketing strategies and performance to keep their market presence strong.

What is Marketing?

Marketing is based on the importance of customers to a business and has two important principles:

- All company policies and activities should be directed toward satisfying customer needs.
- Profitable sales volume is more important than maximum sales volume

To best use these principles, a small business should:

- Determine the needs of their customers through [market research](#)
- Analyze their competitive advantages to develop a [market strategy](#)
- Select specific markets to serve by [target marketing](#)
- Determine how to satisfy customer needs by identifying a market mix

Market Research

Successful marketing requires timely and relevant market information. An inexpensive research program, based on questionnaires given to current or prospective customers, can often uncover dissatisfaction or possible new products or services.

Market research will also identify trends that affect sales and profitability. Population shifts, legal developments, and the local economic situation should be monitored to quickly identify problems and opportunities. It is also important to keep up with competitors' market strategies.

Marketing Strategy

A marketing strategy identifies customer groups which a particular business can better serve than its target competitors, and tailors product offerings, prices, distribution, promotional efforts, and services toward those segments. Ideally, the strategy should address unmet customer needs that offer adequate potential profitability. A good strategy helps a business focus on the target markets it can serve best.

Target Marketing

Owners of small businesses usually have limited resources to spend on marketing. Concentrating their efforts on one or a few key market segments - target marketing - gets the most return from small investments. There are two methods used to segment a market:

Geographical segmentation: Specializing in serving the needs of customers in a particular geographical area. For example, a neighborhood convenience store may send advertisements only to people living within one-half mile of the store.

Customer segmentation: Identifying those people most likely to buy the product or service and targeting those groups.

Managing the Market Mix

Every marketing program contains four key components:

- Products and Services
- Promotion
- Distribution
- Pricing

Products and Services: Product strategies may include concentrating on a narrow product line, developing a highly specialized product or service, or providing a product-service package containing unusually high-quality service.

Promotion: Promotion strategies include advertising and direct customer interaction. Good salesmanship is essential for small businesses because of their limited ability to spend on advertising. Good telephone book advertising is also important. Direct mail is an effective, low-cost medium available to small business.

Price: The right price is crucial for maximizing total revenue. Generally, higher prices mean lower volume and vice-versa; however, small businesses can often command higher prices because of their personalized service.

Distribution: The manufacturer and wholesaler must decide how to distribute their products. Working through established distributors or manufacturers' agents is generally easiest for small manufacturers. Small retailers should consider cost and traffic flow in site selection, especially since advertising and rent can be reciprocal: a low-cost, low-traffic location means spending more on advertising to build traffic.

These all combine into an overall marketing program.

The nature of the product or service is also important in citing decisions. If purchases are based largely on impulse, then high-traffic and visibility are critical. On the other hand, location is less of a concern for products or services that customers are willing to go out of their way to find. The recent availability of highly segmented mailing lists, purchased from list brokers, magazines, or other companies, has enabled certain small businesses to operate from any location, yet serve national or international markets.

Marketing Performance ⁱⁱ

After implementing a marketing program, entrepreneurs must evaluate its performance. Every program should have performance standards to compare with actual results. Researching industry norms and past performances will help to develop appropriate standards.

Entrepreneurs should audit their company's performance at least quarterly. The key questions are:

- Is the company doing all it can to be customer-oriented?
- Do employees ensure the customers are satisfied and leave wanting to come back?
- Is it easy for the customer to find what he or she wants at a competitive price?

eMarketing

E-mail marketing is one of the most effective ways to keep in touch with customers. It is generally cost-effective, and if done properly, can help build brand awareness and loyalty. At a typical cost of only a few cents per message, it's a bargain compared to traditional direct mail at \$1 or more per piece. In addition, response rates on e-mail marketing are strong, ranging from 5 to 35% depending on the industry and format. Response rates for traditional mail averages in the 1 to 3% range.

One of the benefits of e-mail marketing is the demographic information that customers provide when signing up for your e-mail newsletter. Discovering who your customers really are - age, gender, income, and special interests, for example - can help you target your products and services to their needs.

Points to consider when creating your e-mail newsletter:

- **HTML vs. Plain Text:** Response rates for HTML newsletters are generally far higher than plain text, and graphics and colors tend to make the publications look far more professional. The downside is that HTML e-mail is slower to download, and some e-mail providers may screen out HTML email.
- **Provide incentive to subscribe:** To get customers to sign up for your newsletter, advertise the benefits of receiving your newsletter, such as helpful tips, informative content, or early notification of special offers or campaigns.
- **Don't just sell:** Many studies suggest that e-mail newsletters are read far more carefully when they offer information that is useful to the customers' lives rather than merely selling products and services. Helpful tips, engaging content, and humor are often expected to accompany e-mail newsletters.
- **Limit questions:** As each demographic question you ask may reduce the number of customers signing up, it's best to limit the amount of information you solicit or give customers the option of skipping the questionnaire.

Establishing a Web Presence

Even if you choose not to sell your goods or services online, a business web site can be a virtual marketing brochure that you can update on demand with little or no cost. Your presence on the Internet can be a useful marketing tool by providing richer pre-sale information or post-sale support and service. This might temporarily differentiate your product or service from your competitors'. E-marketing has lessened the disadvantage that small businesses have faced for years when competing with larger businesses.

eCommerce has redefined the marketplace, altered business strategies, and allowed global competition between local businesses. The term "electronic commerce" has evolved from meaning simply electronic shopping to representing all aspects of business and market processes enabled by the Internet and other digital technologies. The SBA is preparing to help this new generation of Internet-enabled or eSmall Businesses.

Today's business emphasis is on ecommerce - rapid electronic interactions enabled by the Internet and other connected computer and telephone networks. Rapid business transactions and unparalleled access to information is changing consumer behavior and expectations. The U.S. Small Business Administration (SBA) is reshaping its programs to better serve small businesses that take advantage of the Internet and other emerging technologies.

Many small businesses assume that the Internet has little value to them because they feel that their product or service cannot be easily sold online, but inexpensive information processing and electronic media can help most small businesses provide better, faster customer service and communication. ⁱⁱⁱ

Marketing FAQs

Where can I find the association for the industry that I wish to enter into?

Two excellent sources for locating associations are the [American Society of Association Executives](#) and the [Marketing Resource Center](#). By using their interactive keyword search capabilities, you can search through over 35,000 associations and organizations that cover almost every type of business imaginable.

Where can I go to find the Chambers of Commerce surrounding the community where I wish to open my business?

ChamberBiz.com has a very comprehensive [on-line Chamber Finder tool](#) that should be point you in the right direction.

What does marketing involve?

Marketing is your most important organizing tool. There are four basic aspects of marketing, often called the four Ps:

- Product: The item or service you sell.
- Price: The amount you charge for your product or service.
- Promote: The ways you inform your market as to who, what, and where you are.
- Provide: The channels you use to take the product to the customer.

As you can see, marketing encompasses much more than just advertising or selling. For example, a major part of marketing involves researching your customers: What do they want? What can they afford? What do they think? Your understanding and application of the answers to such questions play a major role in the success or failure of your business.

What is my market potential?

The principles of determining market share and market potential are the same for all geographic areas. First determine a customer profile (who) and the geographic size of the market (how many). This is the general market potential. Knowing the number and strength of your competitors (and then estimating the share of business you will take from them) will give you the market potential specific to your enterprise.

What about advertising?

Your business growth will be influenced by how well you plan and execute an advertising program. As it is one of the main creators of your business' image, it must be well planned and well budgeted. Contact local advertising agencies or a local SBA office to assist you in devising an effective advertising strategy.

How do I set price levels?

The price of a service or item is based on three basic production costs: direct materials, labor, and overhead. After these costs are determined, a price is then selected that will be both profitable and competitive. As pricing can be a complicated process, you may wish to seek help from an expert.

Are some locations better than others?

Time and effort devoted to selecting where to locate your business can mean the difference between success and failure. The kind of business you are in, the potential market, availability of employees, and the number of competitive establishments all determine where you should put your business.

Is it better to lease or buy the store (plant) and equipment?

This is a good question and needs to be considered carefully. Leasing does not tie up your cash; a disadvantage is that the item then has no resale or salvage value since you do not own it. Careful weighing of alternatives and a cost analysis will help you make the best decision.

How do I find out about suppliers/manufacturers/distributors?

Most suppliers want new accounts. A prime source for finding suppliers is the Thomas Register, which lists manufacturers by categories and geographic area. Most libraries have a directory of manufacturers listed by state. If you know the product line manufacturers, a letter or phone call to the companies will get you the local distributor/wholesaler. In some lines, trade shows are good sources of getting suppliers and looking over competing products.

Why do I need a sign for my business?

There are many reasons, the most primary of these being:

- Signs are the most effective, yet least expensive, form of advertising for the small business.
- A sign is your introduction and handshake with those passing by, identifying your business to existing and potential customers.
- Signs are always on the job for you, advertising 24 hours a day, 365 days a year.
- People often judge a business by how it looks on the sign.
- Many merchants increase their business measurably just by adding a good sign.

Conversely, many have gone out of business because they simply were not identified well, so not enough potential customers knew of their existence. As one sign industry professional put it, "A business without a sign is a sign of no business."

- We live in a mobile society. According to the United States Census Bureau, 18% of households relocate each year. As your customers move, you need to replace them by attracting new customers

For additional information, please review the [Understanding the Value of Signage](#) section.

Is signage expensive?

Signage is the least expensive, yet most effective, form of advertising for independent and national retail businesses.

- You pay for the sign once and it works for you 24 hours a day, 7 days a week for years. Use of other media requires paying month after month and you never have the benefit of ownership. You also have no assurance that you're reaching potential customers.
- From a business owner's perspective, a sign should not be viewed as an expense, but as a capital investment. When you factor in your return on investment, signs are not expensive. An effective sign will most likely pay for itself many times over.
- The price for signage will vary greatly depending upon the size, design, style, manufacturer, and mounting type.

In addition, please review the [Understanding the Value of Signage](#) section of this site.

How do I go about obtaining a UPC Bar Code for a product I am manufacturing?

In order for you to be able to print UPC bar code symbols, you will need to become a member of the Uniform Code Council, Inc. (UCC). Once a member, you will be assigned an identification number that will be specific for your company only. To learn more about obtaining a UPC bar code symbol visit the [Uniform Code Council, Inc. web site](#).

I am interested in making my first big sale to a customer that I don't know much about, and therefore I am worried about whether or not I am going to get paid on time. Where can I go to find out more about a company's credit worthiness?

Try Dunn & Bradstreet's Small Business Solutions. [D&B Small Business Solutions](#) gives you easy access to a suite of online tools and services that will help you make better informed credit decisions, find new customers, monitor your competition, and more.

What are the advantages and disadvantages of Yellow Pages advertising?

Advantages of Yellow Pages advertising:

- One ad works all year long.
- It gives your prospect a method of easily locating and contacting your business, even if they didn't initially know your name.
- It can help you describe the differences between you and your competition.
- You pay by the month instead of one large payment.

Disadvantages of Yellow Pages advertising:

- You must commit to an entire year of advertising.
- You are immediately placed with a group of your competitors, making it easy for the prospect to comparison shop.
- Some classifications are so cluttered with advertising that your ad becomes buried and ineffective.
- It is only effective when a prospect looks you up in the correct classification, assuming the prospect knows what classification to look for in the first place.

How can I determine if Yellow Pages advertising will benefit my business?

Probably the easiest way to determine whether or not Yellow Pages advertising is effective for your particular business is to look in the Yellow Pages under your business category and observe the types of ads that your competitors are taking out. If you see a lot of ads (and especially big and expensive ads), you can assume that these businesses are making this type of investment because it has paid off for them. If you don't have any competitors in your particular market, refer to the Yellow Pages in another community close by or in another geographic area similar in make up to yours.

What exactly is specialty advertising?

Specialty advertising basically consists of giveaways - the pencils, pens, buttons, calendars, and refrigerator magnets you see everyday - are called specialty advertising in the trade. Chances are, you have some specialty advertising items right at your desk. Businesses imprint their name on items and give them away (or sometimes sell them at very low cost) in order that:

- You notice their name enough times on the item to build top of the mind awareness, so when you need a restaurant, for instance, you think of their name first.
- You appreciate the goodwill of the company giving you the item and eventually return the favor by giving them some business.

My business associate suggested that I use outdoor advertising. We don't have many billboards in our community, so why should I consider outdoor advertising?

When people think of outdoor advertising, they usually think of the colorful billboards along our streets and highways. Included in the outdoor classification, however, are benches, posters, signs, and transit advertising (the advertising on buses, subways, taxicabs, and trains). They all share similar advertising rules and methods. Outdoor advertising reaches its audience as an element of the environment. Unlike newspaper, radio, or TV, it doesn't need to be invited into the home, and it doesn't provide entertainment to sustain its audience. Here are some reasons why businesses use outdoor advertising:

- Since it is in the public domain, outdoor advertising assuredly reaches its audience. People can't switch it off or throw it out. People are exposed to it whether they like it or not. In this sense, outdoor advertising truly has a captured audience.
- Its messages work on the advertising principle of frequency. Since most messages stay in the same place for a period of a month or more, people who drive by or walk past see the same message a number of times.
- Particular locations can be acquired for certain purposes. A billboard located a block in front of your business can direct people to your showroom, or you can reach rural areas efficiently by placing it billboard in each small town.
- Outdoor advertising is an excellent adjunct to other types of advertising you are doing. In fact, it is most effective when coupled with other media.

Finance and Financial Accounting

Beginners' Guide to Financial Statements

The Basics

If you can read a nutrition label or a baseball box score, you can learn to read basic financial statements. If you can follow a recipe or apply for a loan, you can learn basic accounting. The basics aren't difficult and they aren't rocket science.

This brochure is designed to help you gain a basic understanding of how to read financial statements. Just as a CPR class teaches you how to perform the basics of cardiac pulmonary resuscitation, this brochure will explain how to read the basic parts of a financial statement. It will not train you to be an accountant (just as a CPR course will not make you a cardiac doctor), but it should give you the confidence to be able to look at a set of financial statements and make sense of them.

Let's begin by looking at what financial statements do.

“Show me the money!”

We all remember Cuba Gooding Jr.'s immortal line from the movie *Jerry Maguire*, “Show me the money!” Well, that's what financial statements do. They show you the money. They show you where a company's money came from, where it went, and where it is now.

There are four main financial statements. They are: (1) balance sheets; (2) income statements; (3) cash flow statements; and (4) statements of shareholders' equity. Balance sheets show what a company owns and what it owes at a fixed point in time. Income statements show how much money a company made and spent over a period of time. Cash flow statements show the exchange of money between a company and the outside world also over a period of time. The fourth financial statement, called a “statement of shareholders' equity,” shows changes in the interests of the company's shareholders over time.

Let's look at each of the first three financial statements in more detail.

Balance Sheets

A balance sheet provides detailed information about a company's assets, liabilities and shareholders' equity.

Assets are things that a company owns that have value. This typically means they can either be sold or used by the company to make products or provide services that can be sold. Assets include physical property, such as plants, trucks, equipment and inventory. It also includes things that can't be touched but nevertheless exist and have value, such as trademarks and patents. And cash itself is an asset. So are investments a company makes.

Liabilities are amounts of money that a company owes to others. This can include all kinds of obligations, like money borrowed from a bank to launch a new product, rent for use of a building, money owed to suppliers for materials, payroll a company owes to its employees, environmental cleanup costs, or taxes owed to the government. Liabilities also include obligations to provide goods or services to customers in the future.

Shareholders' equity is sometimes called capital or net worth. It's the money that would be left if a company sold all of its assets and paid off all of its liabilities. This leftover money belongs to the shareholders, or the owners, of the company.

The following formula summarizes what a balance sheet shows:

$$\text{ASSETS} = \text{LIABILITIES} + \text{SHAREHOLDERS' EQUITY}$$

A company's assets have to equal, or "balance," the sum of its liabilities and shareholders' equity.

A company's balance sheet is set up like the basic accounting equation shown above. On the left side of the balance sheet, companies list their assets. On the right side, they list their liabilities and shareholders' equity. Sometimes balance sheets show assets at the top, followed by liabilities, with shareholders' equity at the bottom.

Assets are generally listed based on how quickly they will be converted into cash. Current assets are things a company expects to convert to cash within one year. A good example is inventory. Most companies expect to sell their inventory for cash within one year. Noncurrent assets are things a company does not expect to convert to cash within one year or that would take longer than one year to sell. Noncurrent assets include fixed assets. Fixed assets are those assets used to operate the business but that are not available for sale, such as trucks, office furniture and other property.

Liabilities are generally listed based on their due dates. Liabilities are said to be either current or long-term. Current liabilities are obligations a company expects to pay off within the year. Long-term liabilities are obligations due more than one year away.

Shareholders' equity is the amount owners invested in the company's stock plus or minus the company's earnings or losses since inception. Sometimes companies distribute earnings, instead of retaining them. These distributions are called dividends.

A balance sheet shows a snapshot of a company's assets, liabilities and shareholders' equity at the end of the reporting period. It does not show the flows into and out of the accounts during the period.

Income Statements

An income statement is a report that shows how much revenue a company earned over a specific time period (usually for a year or some portion of a year). An income statement also shows the costs and expenses associated with earning that revenue. The literal "bottom line" of the statement usually shows the company's net earnings or losses. This tells you how much the company earned or lost over the period.

Income statements also report earnings per share (or "EPS"). This calculation tells you how much money shareholders would receive if the company decided to distribute all of the net earnings for the period. (Companies almost never distribute all of their earnings. Usually they reinvest them in the business.)

To understand how income statements are set up, think of them as a set of stairs. You start at the top with the total amount of sales made during the accounting period. Then you go down, one step at a time. At each step, you make a deduction for certain costs or other operating expenses associated with earning the revenue. At the bottom of the stairs, after deducting all of the expenses, you learn how much the company actually earned or lost during the accounting period. People often call this "the bottom line."

At the top of the income statement is the total amount of money brought in from sales of products or services. This top line is often referred to as gross revenues or sales. It's called "gross" because expenses have not been deducted from it yet. So the number is "gross" or unrefined.

The next line is money the company doesn't expect to collect on certain sales. This could be due, for example, to sales discounts or merchandise returns.

When you subtract the returns and allowances from the gross revenues, you arrive at the company's net revenues. It's called "net" because, if you can imagine a net, these revenues are left in the net after the deductions for returns and allowances have come out.

Moving down the stairs from the net revenue line, there are several lines that represent various kinds of operating expenses. Although these lines can be reported in various orders, the next line after net revenues typically shows the costs of the sales. This number tells you the amount of money the company spent to produce the goods or services it sold during the accounting period.

The next line subtracts the costs of sales from the net revenues to arrive at a subtotal called "gross profit" or sometimes "gross margin." It's considered "gross" because there are certain expenses that haven't been deducted from it yet.

The next section deals with operating expenses. These are expenses that go toward supporting a company's operations for a given period – for example, salaries of administrative personnel and costs of researching new products. Marketing expenses are another example. Operating expenses are different from “costs of sales,” which were deducted above, because operating expenses cannot be linked directly to the production of the products or services being sold.

Depreciation is also deducted from gross profit. Depreciation takes into account the wear and tear on some assets, such as machinery, tools and furniture, which are used over the long term. Companies spread the cost of these assets over the periods they are used. This process of spreading these costs is called depreciation or amortization. The “charge” for using these assets during the period is a fraction of the original cost of the assets.

After all operating expenses are deducted from gross profit, you arrive at operating profit before interest and income tax expenses. This is often called “income from operations.”

Next companies must account for interest income and interest expense. Interest income is the money companies make from keeping their cash in interest-bearing savings accounts, money market funds and the like. On the other hand, interest expense is the money companies paid in interest for money they borrow. Some income statements show interest income and interest expense separately. Some income statements combine the two numbers. The interest income and expense are then added or subtracted from the operating profits to arrive at operating profit before income tax.

Finally, income tax is deducted and you arrive at the bottom line: net profit or net losses. (Net profit is also called net income or net earnings.) This tells you how much the company actually earned or lost during the accounting period. Did the company make a profit or did it lose money?

Earnings Per Share or EPS

Most income statements include a calculation of earnings per share or EPS. This calculation tells you how much money shareholders would receive for each share of stock they own if the company distributed all of its net income for the period.

To calculate EPS, you take the total net income and divide it by the number of outstanding shares of the company.

Cash Flow Statements

Cash flow statements report a company's inflows and outflows of cash. This is important because a company needs to have enough cash on hand to pay its expenses and purchase assets. While an income statement can tell you whether a company made a profit, a cash flow statement can tell you whether the company generated cash.

A cash flow statement shows changes over time rather than absolute dollar amounts at a point in time. It uses and reorders the information from a company's balance sheet and income statement.

The bottom line of the cash flow statement shows the net increase or decrease in cash for the period. Generally, cash flow statements are divided into three main parts. Each part reviews the cash flow from one of three types of activities: (1) operating activities; (2) investing activities; and (3) financing activities.

Operating Activities

The first part of a cash flow statement analyzes a company's cash flow from net income or losses. For most companies, this section of the cash flow statement reconciles the net income (as shown on the income statement) to the actual cash the company received from or used in its operating activities. To do this, it adjusts net income for any non-cash items (such as adding back depreciation expenses) and adjusts for any cash that was used or provided by other operating assets and liabilities.

Investing Activities

The second part of a cash flow statement shows the cash flow from all investing activities, which generally include purchases or sales of long-term assets, such as property, plant and equipment, as well as investment securities. If a company buys a piece of machinery, the cash flow statement would reflect this activity as a cash outflow from investing activities because it used cash. If the company decided to sell off some investments from an investment portfolio, the proceeds from the sales would show up as a cash inflow from investing activities because it provided cash.

Financing Activities

The third part of a cash flow statement shows the cash flow from all financing activities. Typical sources of cash flow include cash raised by selling stocks and bonds or borrowing from banks. Likewise, paying back a bank loan would show up as a use of cash flow.

Read the Footnotes

A horse called “Read The Footnotes” ran in the 2004 Kentucky Derby. He finished seventh, but if he had won, it would have been a victory for financial literacy proponents everywhere. It’s so important to *read the footnotes*. The footnotes to financial statements are packed with information. Here are some of the highlights:

- Significant accounting policies and practices – Companies are required to disclose the accounting policies that are most important to the portrayal of the company’s financial condition and results. These often require management’s most difficult, subjective or complex judgments.
- Income taxes – The footnotes provide detailed information about the company’s current and deferred income taxes. The information is broken down by level – federal, state, local and/or foreign, and the main items that affect the company’s effective tax rate are described.
- Pension plans and other retirement programs – The footnotes discuss the company’s pension plans and other retirement or post-employment benefit programs. The notes contain specific information about the assets and costs of these programs, and indicate whether and by how much the plans are over- or under-funded.
- Stock options – The notes also contain information about stock options granted to officers and employees, including the method of accounting for stock-based compensation and the effect of the method on reported results.

Read the MD&A

You can find a narrative explanation of a company’s financial performance in a section of the quarterly or annual report entitled, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” MD&A is *management’s* opportunity to provide investors with its view of the financial performance and condition of the company. It’s management’s opportunity to tell investors what the financial statements show and do not show, as well as important trends and risks that have shaped the past or are reasonably likely to shape the company’s future.

The SEC’s rules governing MD&A require disclosure about trends, events or uncertainties known to management that would have a material impact on reported financial information. The purpose of MD&A is to provide investors with information that the company’s management believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. It is intended to help investors to see the company through the eyes of management. It is also intended to provide context for the financial statements and information about the company’s earnings and cash flows.

Financial Statement Ratios and Calculations

You've probably heard people banter around phrases like "P/E ratio," "current ratio" and "operating margin." But what do these terms mean and why don't they show up on financial statements? Listed below are just some of the many ratios that investors calculate from information on financial statements and then use to evaluate a company. As a general rule, desirable ratios vary by industry.

- *Debt-to-equity ratio* compares a company's total debt to shareholders' equity. Both of these numbers can be found on a company's balance sheet. To calculate debt-to-equity ratio, you divide a company's total liabilities by its shareholder equity, or

$$\text{Debt-to-Equity Ratio} = \text{Total Liabilities} / \text{Shareholders' Equity}$$

If a company has a debt-to-equity ratio of 2 to 1, it means that the company has two dollars of debt to every one dollar shareholders invest in the company. In other words, the company is taking on debt at twice the rate that its owners are investing in the company.

- *Inventory turnover ratio* compares a company's cost of sales on its income statement with its average inventory balance for the period. To calculate the average inventory balance for the period, look at the inventory numbers listed on the balance sheet. Take the balance listed for the period of the report and add it to the balance listed for the previous comparable period, and then divide by two. (Remember that balance sheets are snapshots in time. So the inventory balance for the previous period is the beginning balance for the current period, and the inventory balance for the current period is the ending balance.) To calculate the inventory turnover ratio, you divide a company's cost of sales (just below the net revenues on the income statement) by the average inventory for the period, or

$$\text{Inventory Turnover Ratio} = \text{Cost of Sales} / \text{Average Inventory for the Period}$$

If a company has an inventory turnover ratio of 2 to 1, it means that the company's inventory turned over twice in the reporting period.

- *Operating margin* compares a company's operating income to net revenues. Both of these numbers can be found on a company's income statement. To calculate operating margin, you divide a company's income from operations (before interest and income tax expenses) by its net revenues, or

$$\text{Operating Margin} = \text{Income from Operations} / \text{Net Revenues}$$

Operating margin is usually expressed as a percentage. It shows, for each dollar of sales, what percentage was profit.

- *P/E ratio* compares a company's common stock price with its earnings per share. To calculate a company's P/E ratio, you divide a company's stock price by its earnings per share, or

$$\text{P/E Ratio} = \text{Price per share} / \text{Earnings per share}$$

If a company's stock is selling at \$20 per share and the company is earning \$2 per share, then the company's P/E Ratio is 10 to 1. The company's stock is selling at 10 times its earnings.

- *Working capital* is the money leftover if a company paid its current liabilities (that is, its debts due within one-year of the date of the balance sheet) from its current assets.

$$\text{Working Capital} = \text{Current Assets} - \text{Current Liabilities}$$

Bringing It All Together

Although this brochure discusses each financial statement separately, keep in mind that they are all related. The changes in assets and liabilities that you see on the balance sheet are also reflected in the revenues and expenses that you see on the income statement, which result in the company's gains or losses. Cash flows provide more information about cash assets listed on a balance sheet and are related, but not equivalent, to net income shown on the income statement. And so on. No one financial statement tells the complete story. But combined, they provide very powerful information for investors. And information is the investor's best tool when it comes to investing wisely. ^{iv}

Stocks Bonds and Cash

While the SEC cannot recommend any particular investment product, you should know that a vast array of investment products exists – including stocks and stock mutual funds, corporate and municipal bonds, bond mutual funds, lifecycle funds, exchange-traded funds, money market funds, and U.S. Treasury securities. For many financial goals, investing in a mix of stocks, bonds, and cash can be a good strategy. Let’s take a closer look at the characteristics of the three major asset categories.

- **Stocks** – Stocks have historically had the greatest risk and highest returns among the three major asset categories. As an asset category, stocks are a portfolio’s “heavy hitter,” offering the greatest potential for growth. Stocks hit home runs, but also strike out. The volatility of stocks makes them a very risky investment in the short term. Large company stocks as a group, for example, have lost money on average about one out of every three years. And sometimes the losses have been quite dramatic. But investors that have been willing to ride out the volatile returns of stocks over long periods of time generally have been rewarded with strong positive returns.
- **Bonds** – Bonds are generally less volatile than stocks but offer more modest returns. As a result, an investor approaching a financial goal might increase his or her bond holdings relative to his or her stock holdings because the reduced risk of holding more bonds would be attractive to the investor despite their lower potential for growth. You should keep in mind that certain categories of bonds offer high returns similar to stocks. But these bonds, known as high-yield or junk bonds, also carry higher risk.
- **Cash** – Cash and cash equivalents – such as savings deposits, certificates of deposit, treasury bills, money market deposit accounts, and money market funds – are the safest investments, but offer the lowest return of the three major asset categories. The chances of losing money on an investment in this asset category are generally extremely low. The federal government guarantees many investments in cash equivalents. Investment losses in non-guaranteed cash equivalents do occur, but infrequently. The principal concern for investors investing in cash equivalents is inflation risk. This is the risk that inflation will outpace and erode investment returns over time.

Stocks, bonds, and cash are the most common asset categories. These are the asset categories you would likely choose from when investing in a retirement savings program or a college savings plan. But other asset categories – including real estate, precious metals and other commodities, and private equity – also exist, and some investors may include these asset categories within a portfolio. Investments in these asset categories typically have category-specific risks. Before you make any investment, you should understand the risks of the investment and make sure the risks are appropriate for you. ^v

Asset Allocation 101

Asset allocation involves dividing an investment portfolio among different asset categories, such as stocks, bonds, and cash. The process of determining which mix of assets to hold in your portfolio is a very personal one. The asset allocation that works best for you at any given point in your life will depend largely on your time horizon and your ability to tolerate risk.^{vi}

- **Time Horizon** – Your time horizon is the expected number of months, years, or decades you will be investing to achieve a particular financial goal. An investor with a longer time horizon may feel more comfortable taking on a riskier, or more volatile, investment because he or she can wait out slow economic cycles and the inevitable ups and downs of our markets. By contrast, an investor saving up for a teenager’s college education would likely take on less risk because he or she has a shorter time horizon.
- **Risk Tolerance** – Risk tolerance is your ability and willingness to lose some or all of your original investment in exchange for greater potential returns. An aggressive investor, or one with a high-risk tolerance, is more likely to risk losing money in order to get better results. A conservative investor, or one with a low-risk tolerance, tends to favor investments that will preserve his or her original investment. In the words of the famous saying, conservative investors keep a “bird in the hand,” while aggressive investors seek “two in the bush.”

Small Business and the SEC

A guide to help you understand how to raise capital and comply with the federal securities laws ^{vii}

I. What Are the Federal Securities Laws?

In the chaotic securities markets of the 1920s, companies often sold stocks and bonds on the basis of glittering promises of fantastic profits - without disclosing any meaningful information to investors. These conditions contributed to the disastrous Stock Market Crash of 1929. In response, the U.S. Congress enacted the federal securities laws and created the Securities and Exchange Commission (SEC) to administer them.

There are two primary sets of federal laws that come into play when a company wants to offer and sell its securities to the public. They are:

- the Securities Act of 1933 (Securities Act), and
- the Securities Exchange Act of 1934 (Exchange Act).

Securities Act

The Securities Act generally requires companies to give investors "full disclosure" of all "material facts," the facts investors would find important in making an investment decision. This Act also requires companies to file a registration statement with the SEC that includes information for investors. The SEC does not evaluate the merits of offerings, or determine if the securities offered are "good" investments. The SEC staff reviews registration statements and declares them "effective" if companies satisfy our disclosure rules.

Exchange Act

The Exchange Act requires publicly held companies to disclose information continually about their business operations, financial conditions, and managements. These companies, and in many cases their officers, directors and significant shareholders, must file periodic reports or other disclosure documents with the SEC. In some cases, the company must deliver the information directly to investors.

III. Benefits of a Company “Going Public”?

Benefits

- Your access to capital will increase, since you can contact more potential investors.
- Your company may become more widely known.
- You may obtain financing more easily in the future if investor interest in your company grows enough to sustain a secondary trading market in your securities.

- Controlling shareholders, such as the company's officers or directors, may have a ready market for their shares, which means that they can more easily sell their interests at retirement, for diversification, or for some other reason.
- Your company may be able to attract and retain more highly qualified personnel if it can offer stock options, bonuses, or other incentives with a known market value.
- The image of your company may be improved.

New Obligations

- You must continue to keep shareholders informed about the company's business operations, financial condition, and management, incurring additional costs and new legal obligations.
- You may be liable if you do not fulfill these new legal obligations.
- You may lose some flexibility in managing your company's affairs, particularly when shareholders must approve your actions.
- Your public offering will take time and money to accomplish.

Reporting obligations because of Securities Act registration

Once the staff declares your company's Securities Act registration statement effective, the Exchange Act requires you to file reports with the SEC. The obligation to file reports continues at least through the end of the fiscal year in which your registration statement becomes effective. After that, you are required to continue reporting unless you satisfy the following "thresholds," in which case your filing obligations are suspended:

- your company has fewer than 300 shareholders of the class of securities offered; or
- your company has fewer than 500 shareholders of the class of securities offered and less than \$10 million in total assets for each of its last three fiscal years.

If your company is subject to the reporting requirements, it must file information with the SEC about:

- its operations;
- its officers, directors, and certain shareholders, including salary, various fringe benefits, and transactions between the company and management;
- the financial condition of the business, including financial statements audited by an independent certified public accountant; and
- its competitive position and material terms of contracts or lease agreements.

All of this information becomes publicly available when you file your reports with the SEC. As is true with Securities Act filings, small business issuers may choose to use small business alternative forms and Regulation S-B for registration and reporting under the Exchange Act.

Obligations because of Exchange Act registration

Even if your company has not registered a securities offering, it must file an Exchange Act registration statement if:

- it has more than \$10 million total assets and a class of equity securities, like common stock, with 500 or more shareholders; or
- it lists its securities on an exchange or on Nasdaq.

If a class of your company's securities is registered under the Exchange Act, the company, as well as its shareholders and management, are subject to various reporting requirements, explained below.

Ongoing Exchange Act periodic reporting

If your company registers a class of securities under the Exchange Act, it must file the same annual, periodic, and current reports that are required as a result of Securities Act registration, as explained above. This obligation continues for as long as the company exceeds the reporting thresholds. If your company's securities are traded on an exchange or on Nasdaq, the company must continue filing these reports as long as the securities trade on those markets, even if your company falls below the thresholds.

Are There Legal Ways To Offer and Sell Securities Without Registering With the SEC?

Yes! Your company's securities offering may qualify for one of several exemptions from the registration requirements. We explain the most common ones below. You must remember, however, that all securities transactions, even exempt transactions, are subject to the antifraud provisions of the federal securities laws. This means that you and your company will be responsible for false or misleading statements, whether oral or written. The government enforces the federal securities laws through criminal, civil and administrative proceedings. Some enforcement proceedings are brought through private law suits. Also, if all conditions of the exemptions are not met, purchasers may be able to obtain refunds of their purchase price. In addition, offerings that are exempt from provisions of the federal securities laws may still be subject to the notice and filing obligations of various state laws. Make sure you check with the appropriate state securities administrator before proceeding with your offering.

An "accredited investor" is:

- a bank, insurance company, registered investment company, business development company, or small business investment company;
- an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
- a charitable organization, corporation or partnership with assets exceeding \$5 million;
- a director, executive officer, or general partner of the company selling the securities;
- a business in which all the equity owners are accredited investors;
- a natural person with a net worth of at least \$1 million;
- a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or
- a trust with assets of at least \$5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.

It is up to you to decide what information you give to accredited investors, so long as it does not violate the antifraud prohibitions. But you must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If you provide information to accredited investors, you must make this information available to the non-accredited investors as well. You must also be available to answer questions by prospective purchasers.

Where Can I Go for More Information on Securities?

The staff of the SEC's Office of Small Business and the SEC's Small Business Ombudsman will be glad to assist you with any questions you may have regarding federal securities laws. For information about state securities laws, contact NASAA or your state's securities administrator, whose office is usually located in your capital city.

The entire text of the SEC's rules and regulations is available through the U.S. Government Printing Office or from several private publishers of legal information. In addition, numerous books on this subject have been published, and some are available at public libraries. As of this writing, the following volumes of Title 17 of the Code of Federal Regulations (the SEC's rules and regulations) were available from the Government Printing Office:

- Vol. II - Parts 200 to 239. SEC Organization; Conduct and Ethics; Information and Requests; Rules of Practice; Regulation S-X and Securities Act of 1933.
- Vol III - Parts 240 to End. Securities Exchange Act of 1934; Public Utility Holding Company, Trust Indenture, Investment Company, Investment Advisers, and Securities Investor Protection Corporation Acts.

For additional information about how to obtain official publications of Commission rules and regulations, contact:

Superintendent of Documents
Government Printing Office
Washington DC 20402-9325

For copies of SEC forms and recent SEC releases:

Publications Section
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0019
Telephone: (202)942-4046

Other useful addresses, telephone numbers, web sites and e-mail:

SEC's World Wide Web site: <http://www.sec.gov>

SEC Office of Small Business
SEC Small Business Ombudsman
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0304
Telephone: (202) 551-3460

E-mail addresses:

smallbusiness@sec.gov

help@sec.gov

North American Securities Administrators Association
10 "G" Street, N.E., Suite 710
Washington, D.C. 20002
(202) 737-0900

NASAA's World Wide Web site: <http://www.nasaa.org>

SBA's World Wide Web site: <http://www.sba.gov>

ACE-Net World Wide Web site: <http://www.ace-net.org>

<http://www.sec.gov/info/smallbus/qasbsec.htm>

Helpful Links about Securities and The SEC

<u>American Depositary Receipts</u>	<u>Investors -</u>
<u>Arbitration</u>	- <u>accredited investors</u>
<u>Auditing</u>	- <u>complaints, investigations</u>
<u>Bankruptcy</u>	- <u>foreign (non-U.S.)</u>
<u>Banks and Banking</u>	- <u>privacy rights, protections</u>
<u>Bonds</u>	<u>Mutual Funds</u>
<u>Brokers and Brokerages</u>	<u>Options</u>
- <u>Online, Electronic Accounts</u>	<u>Promissory Notes</u>
<u>Certificates of Deposit</u>	<u>Securities Investor Protection Corp.</u>
<u>Corporations — Directors and Officers</u>	<u>Small Business</u>
<u>EDGAR (SEC's online database of company reports)</u>	<u>Stock</u>
<u>Financial Statements</u>	- <u>Certificates</u>
<u>Fraud</u>	- <u>Dividends</u>
- <u>identity theft</u>	- <u>Exchanges</u>
<u>Futures</u>	- <u>Indexes</u>
<u>Hedge Funds</u>	- <u>Prices</u>
<u>Insider Trading</u>	<u>Tender Offers</u>
<u>Insurance -</u>	<u>Trading Securities</u>
- <u>equity-indexed annuities</u>	- <u>day trading</u>
- <u>life</u>	- <u>online, electronic trading</u>
- <u>variable annuities</u>	- <u>margin, purchase agreements</u>
<u>Investment Advisers, Advisors</u>	- <u>laws, rules and regulations</u>
<u>Investment Clubs</u>	<u>US Securities and Exchange Commission -</u>
<u>Investment Companies</u>	- <u>divisions and offices</u>
<u>Investments -</u>	- <u>guides, handbooks, research-tools</u>
- <u>calculators, planning</u>	
- <u>foreign (non-U.S.)</u>	
- <u>Internet</u>	
- <u>prepaid tuition, college savings plan</u>	
- <u>products, choices</u>	
- <u>research, education</u>	
- <u>retirement income</u>	

Economics – The U.S. Economy: A Brief History ^{viii}

The modern American economy traces its roots to the quest of European settlers for economic gain in the 16th, 17th, and 18th centuries. The New World then progressed from a marginally successful colonial economy to a small, independent farming economy and, eventually, to a highly complex industrial economy. During this evolution, the United States developed ever more complex institutions to match its growth. And while government involvement in the economy has been a consistent theme, the extent of that involvement generally has increased.

North America's first inhabitants were Native Americans -- indigenous peoples who are believed to have traveled to America about 20,000 years earlier across a land bridge from Asia, where the Bering Strait is today. (They were mistakenly called "Indians" by European explorers, who thought they had reached India when first landing in the Americas.) These native peoples were organized in tribes and, in some cases, confederations of tribes. While they traded among themselves, they had little contact with peoples on other continents, even with other native peoples in South America, before European settlers began arriving. What economic systems they did develop were destroyed by the Europeans who settled their lands.

Vikings were the first Europeans to "discover" America. But the event, which occurred around the year 1000, went largely unnoticed; at the time, most of European society was still firmly based on agriculture and land ownership. Commerce had not yet assumed the importance that would provide an impetus to the further exploration and settlement of North America.

In 1492, Christopher Columbus, an Italian sailing under the Spanish flag, set out to find a southwest passage to Asia and discovered a "New World." For the next 100 years, English, Spanish, Portuguese, Dutch, and French explorers sailed from Europe for the New World, looking for gold, riches, honor, and glory.

But the North American wilderness offered early explorers little glory and less gold, so most did not stay. The people who eventually did settle North America arrived later. In 1607, a band of Englishmen built the first permanent settlement in what was to become the United States. The settlement, Jamestown, was located in the present-day state of Virginia.

Colonization

Early settlers had a variety of reasons for seeking a new homeland. The Pilgrims of Massachusetts were pious, self-disciplined English people who wanted to escape religious persecution. Other colonies, such as Virginia, were founded principally as business ventures. Often, though, piety and profits went hand-in-hand.

England's success at colonizing what would become the United States was due in large part to its use of charter companies. Charter companies were groups of stockholders (usually merchants and wealthy landowners) who sought personal economic gain and, perhaps, wanted also to advance England's national goals. While the private sector financed the companies, the King provided each project with a charter or grant conferring economic rights as well as political and judicial authority. The colonies generally did not show quick profits, however, and the English investors often turned over their colonial charters to the settlers. The political implications, although not realized at the time, were enormous. The colonists were left to build their own lives, their own communities, and their own economy -- in effect, to start constructing the rudiments of a new nation.

What early colonial prosperity there was resulted from trapping and trading in furs. In addition, fishing was a primary source of wealth in Massachusetts. But throughout the colonies, people lived primarily on small farms and were self-sufficient. In the few small cities and among the larger plantations of North Carolina, South Carolina, and Virginia, some necessities and virtually all luxuries were imported in return for tobacco, rice, and indigo (blue dye) exports.

Supportive industries developed as the colonies grew. A variety of specialized sawmills and gristmills appeared. Colonists established shipyards to build fishing fleets and, in time, trading vessels. They also built small iron forges. By the 18th century, regional patterns of development had become clear: the New England colonies relied on ship-building and sailing to generate wealth; plantations (many using slave labor) in Maryland, Virginia, and the Carolinas grew tobacco, rice, and indigo; and the middle colonies of New York, Pennsylvania, New Jersey, and Delaware shipped general crops and furs. Except for slaves, standards of living were generally high -- higher, in fact, than in England itself. Because English investors had withdrawn, the field was open to entrepreneurs among the colonists.

By 1770, the North American colonies were ready, both economically and politically, to become part of the emerging self-government movement that had dominated English politics since the time of James I (1603-1625). Disputes developed with England over taxation and other matters; Americans hoped for a modification of English taxes and regulations that would satisfy their demand for more self-government. Few thought the mounting quarrel with the English government would lead to all-out war against the British and to independence for the colonies.

Like the English political turmoil of the 17th and 18th centuries, the American Revolution (1775-1783) was both political and economic, bolstered by an emerging middle class with a rallying cry of "unalienable rights to life, liberty, and property" -- a phrase openly borrowed from English philosopher John Locke's *Second Treatise on Civil Government* (1690). The war was triggered by an event in April 1775. British soldiers, intending to capture a colonial arms depot at Concord, Massachusetts, clashed with colonial militiamen. Someone -- no one knows exactly who -- fired a shot, and eight years of fighting began. While political separation from England may not have been the majority of colonists' original goal, independence and the creation of a new nation -- the United States -- was the ultimate result.

The New Nation's Economy

The U.S. Constitution, adopted in 1787 and in effect to this day, was in many ways a work of creative genius. As an economic charter, it established that the entire nation -- stretching then from Maine to Georgia, from the Atlantic Ocean to the Mississippi Valley -- was a unified, or "common," market. There were to be no tariffs or taxes on interstate commerce. The Constitution provided that the federal government could regulate commerce with foreign nations and among the states, establish uniform bankruptcy laws, create money and regulate its value, fix standards of weights and measures, establish post offices and roads, and fix rules governing patents and copyrights. The last-mentioned clause was an early recognition of the importance of "intellectual property," a matter that would assume great importance in trade negotiations in the late 20th century.

Alexander Hamilton, one of the nation's Founding Fathers and its first secretary of the treasury, advocated an economic development strategy in which the federal government would nurture infant industries by providing overt subsidies and imposing protective tariffs on imports. He also urged the federal government to create a national bank and to assume the public debts that the colonies had incurred during the Revolutionary War. The new government dallied over some of Hamilton's proposals, but ultimately it did make tariffs an essential part of American foreign policy -- a position that lasted until almost the middle of the 20th century.

Although early American farmers feared that a national bank would serve the rich at the expense of the poor, the first National Bank of the United States was chartered in 1791; it lasted until 1811, after which a successor bank was chartered.

Hamilton believed the United States should pursue economic growth through diversified shipping, manufacturing, and banking. Hamilton's political rival, Thomas Jefferson, based his philosophy on protecting the common man from political and economic tyranny. He particularly praised small farmers as "the most valuable citizens." In 1801, Jefferson became president (1801-1809) and turned to promoting a more decentralized, agrarian democracy.

Movement South and Westward

Cotton, at first a small-scale crop in the South, boomed following Eli Whitney's invention in 1793 of the cotton gin, a machine that separated raw cotton from seeds and other waste. Planters in the South bought land from small farmers who frequently moved farther west. Soon, large plantations, supported by slave labor, made some families very wealthy.

It wasn't just southerners who were moving west, however. Whole villages in the East sometimes uprooted and established new settlements in the more fertile farmland of the Midwest. While western settlers are often depicted as fiercely independent and strongly opposed to any kind of government control or interference, they actually received a lot of government help, directly and indirectly. Government-created national roads and waterways, such as the Cumberland Pike (1818) and the Erie Canal (1825), helped new settlers migrate west and later helped move western farm produce to market.

Many Americans, both poor and rich, idealized Andrew Jackson, who became president in 1829, because he had started life in a log cabin in frontier territory. President Jackson (1829-1837) opposed the successor to Hamilton's National Bank, which he believed favored the entrenched interests of the East against the West. When he was elected for a second term, Jackson opposed renewing the bank's charter, and Congress supported him. Their actions shook confidence in the nation's financial system, and business panics occurred in both 1834 and 1837.

Periodic economic dislocations did not curtail rapid U.S. economic growth during the 19th century. New inventions and capital investment led to the creation of new industries and economic growth. As transportation improved, new markets continuously opened. The steamboat made river traffic faster and cheaper, but development of railroads had an even greater effect, opening up vast stretches of new territory for development. Like canals and roads, railroads received large amounts of government assistance in their early building years in the form of land grants. But unlike other forms of transportation, railroads also attracted a good deal of domestic and European private investment.

In these heady days, get-rich-quick schemes abounded. Financial manipulators made fortunes overnight, but many people lost their savings. Nevertheless, a combination of vision and foreign investment, combined with the discovery of gold and a major commitment of America's public and private wealth, enabled the nation to develop a large-scale railroad system, establishing the base for the country's industrialization.

Industrial Growth

The Industrial Revolution began in Europe in the late 18th and early 19th centuries, and it quickly spread to the United States. By 1860, when Abraham Lincoln was elected president, 16 percent of the U.S. population lived in urban areas, and a third of the nation's income came from manufacturing. Urbanized industry was limited primarily to the Northeast; cotton cloth production was the leading industry, with the manufacture of shoes, woolen clothing, and machinery also expanding. Many new workers were immigrants. Between 1845 and 1855, some 300,000 European immigrants arrived annually. Most were poor and remained in eastern cities, often at ports of arrival.

The South, on the other hand, remained rural and dependent on the North for capital and manufactured goods. Southern economic interests, including slavery, could be protected by political power only as long as the South controlled the federal government. The Republican Party, organized in 1856, represented the industrialized North. In 1860, Republicans and their presidential candidate, Abraham Lincoln were speaking hesitantly on slavery, but they were much clearer on economic policy. In 1861, they successfully pushed adoption of a protective tariff. In 1862, the first Pacific railroad was chartered. In 1863 and 1864, a national bank code was drafted.

Northern victory in the U.S. Civil War (1861-1865), however, sealed the destiny of the nation and its economic system. The slave-labor system was abolished, making the large southern cotton plantations much less profitable. Northern industry, which had expanded rapidly because of the demands of the war, surged ahead. Industrialists came to dominate many aspects of the nation's life, including social and political affairs. The planter aristocracy of the South, portrayed sentimentally 70 years later in the film classic *Gone with the Wind*, disappeared.

Inventions, Development, and Tycoons

The rapid economic development following the Civil War laid the groundwork for the modern U.S. industrial economy. An explosion of new discoveries and inventions took place, causing such profound changes that some termed the results a "second industrial revolution." Oil was discovered in western Pennsylvania. The typewriter was developed. Refrigeration railroad cars came into use. The telephone, phonograph, and electric light were invented. And by the dawn of the 20th century, cars were replacing carriages and people were flying in airplanes.

Parallel to these achievements was the development of the nation's industrial infrastructure. Coal was found in abundance in the Appalachian Mountains from Pennsylvania south to Kentucky. Large iron mines opened in the Lake Superior region of the upper Midwest. Mills thrived in places where these two important raw materials could be brought together to produce steel. Large copper and silver mines opened, followed by lead mines and cement factories.

As industry grew larger, it developed mass-production methods. Frederick W. Taylor pioneered the field of scientific management in the late 19th century, carefully plotting the functions of various workers and then devising new, more efficient ways for them to do their jobs. (True mass production was the inspiration of Henry Ford, who in 1913 adopted the moving assembly line, with each worker doing one simple task in the production of automobiles. In what turned out to be a farsighted action, Ford offered a very generous wage -- \$5 a day -- to his workers, enabling many of them to buy the automobiles they made, helping the industry to expand.)

The "Gilded Age" of the second half of the 19th century was the epoch of tycoons. Many Americans came to idealize these businessmen who amassed vast financial empires. Often their success lay in seeing the long-range potential for a new service or product, as John D. Rockefeller did with oil. They were fierce competitors, single-minded in their pursuit of financial success and power. Other giants in addition to Rockefeller and Ford included Jay Gould, who made his money in railroads; J. Pierpont Morgan, banking; and Andrew Carnegie, steel. Some tycoons were honest according to business standards of their day; others, however, used force, bribery, and guile to achieve their wealth and power. For better or worse, business interests acquired significant influence over government.

Morgan, perhaps the most flamboyant of the entrepreneurs, operated on a grand scale in both his private and business life. He and his companions gambled, sailed yachts, gave lavish parties, built palatial homes, and bought European art treasures. In contrast, men such as Rockefeller and Ford exhibited puritanical qualities. They retained small-town values and lifestyles. As church-goers, they felt a sense of responsibility to others. They believed that personal virtues could bring success; theirs was the gospel of work and thrift. Later their heirs would establish the largest philanthropic foundations in America.

While upper-class European intellectuals generally looked on commerce with disdain, most Americans -- living in a society with a more fluid class structure -- enthusiastically embraced the idea of moneymaking. They enjoyed the risk and excitement of business enterprise, as well as the higher living standards and potential rewards of power and acclaim that business success brought.

As the American economy matured in the 20th century, however, the freewheeling business mogul lost luster as an American ideal. The crucial change came with the emergence of the corporation, which appeared first in the railroad industry and then elsewhere. Business barons were replaced by "technocrats," high-salaried managers who became the heads of corporations. The rise of the corporation triggered, in turn, the rise of an organized labor movement that served as a countervailing force to the power and influence of business.

The technological revolution of the 1980s and 1990s brought a new entrepreneurial culture that echoes of the age of tycoons. Bill Gates, the head of Microsoft, built an immense fortune developing and selling computer software. Gates carved out an empire so profitable that by the late 1990s, his company was taken into court and accused of intimidating rivals and creating a monopoly by the U.S. Justice Department's antitrust division. But Gates also established a charitable foundation that quickly became the largest of its kind. Most American business leaders of today do not lead the high-profile life of Gates. They direct the fate of corporations, but they also serve on boards for charities and schools. They are concerned about the state of the national economy and America's relationship with other nations, and they are likely to fly to Washington to confer with government officials. While they undoubtedly influence the government, they do not control it -- as some tycoons in the Gilded Age believed they did.

Government Involvement

In the early years of American history, most political leaders were reluctant to involve the federal government too heavily in the private sector, except in the area of transportation. In general, they accepted the concept of *laissez-faire*, a doctrine opposing government interference in the economy except to maintain law and order. This attitude started to change during the latter part of the 19th century, when small business, farm, and labor movements began asking the government to intercede on their behalf.

By the turn of the century, a middle class had developed that was leery of both the business elite and the somewhat radical political movements of farmers and laborers in the Midwest and West. Known as Progressives, these people favored government regulation of business practices to ensure competition and free enterprise. They also fought corruption in the public sector.

Congress enacted a law regulating railroads in 1887 (the Interstate Commerce Act), and one preventing large firms from controlling a single industry in 1890 (the Sherman Antitrust Act). These laws were not rigorously enforced, however, until the years between 1900 and 1920, when Republican President Theodore Roosevelt (1901-1909), Democratic President Woodrow Wilson (1913-1921), and others sympathetic to the views of the Progressives came to power. Many of today's U.S. regulatory agencies were created during these years, including the Interstate Commerce Commission, the Food and Drug Administration, and the Federal Trade Commission.

Government involvement in the economy increased most significantly during the New Deal of the 1930s. The 1929 stock market crash had initiated the most serious economic dislocation in the nation's history, the Great Depression (1929-1940). President Franklin D. Roosevelt (1933-1945) launched the New Deal to alleviate the emergency.

Many of the most important laws and institutions that define American's modern economy can be traced to the New Deal era. New Deal legislation extended federal authority in banking, agriculture, and public welfare. It established minimum standards for wages and hours on the job, and it served as a catalyst for the expansion of labor unions in such industries as steel, automobiles, and rubber. Programs and agencies that today seem indispensable to the operation of the country's modern economy were created: the Securities and Exchange Commission, which regulates the stock market; the Federal Deposit Insurance Corporation, which guarantees bank deposits; and, perhaps most notably, the Social Security system, which provides pensions to the elderly based on contributions they made when they were part of the work force.

New Deal leaders flirted with the idea of building closer ties between business and government, but some of these efforts did not survive past World War II. The National Industrial Recovery Act, a short-lived New Deal program, sought to encourage business leaders and workers, with government supervision, to resolve conflicts and thereby increase productivity and efficiency. While America never took the turn to fascism that similar business-labor-government arrangements did in Germany and Italy, the New Deal initiatives did point to a new sharing of power among these three key economic players. This confluence of power grew even more during the war, as the U.S. government intervened extensively in the economy. The War Production Board coordinated the nation's productive capabilities so that military priorities would be met. Converted consumer-products plants filled many military orders. Automakers built tanks and aircraft, for example, making the United States the "arsenal of democracy." In an effort to prevent rising national income and scarce consumer products to cause inflation, the newly created Office of Price Administration controlled rents on some dwellings, rationed consumer items ranging from sugar to gasoline, and otherwise tried to restrain price increases.

The Postwar Economy: 1945-1960

Many Americans feared that the end of World War II and the subsequent drop in military spending might bring back the hard times of the Great Depression. But instead, pent-up consumer demand fueled exceptionally strong economic growth in the postwar period. The automobile industry successfully converted back to producing cars, and new industries such as aviation and electronics grew by leaps and bounds. A housing boom, stimulated in part by easily affordable mortgages for returning members of the military, added to the expansion. The nation's gross national product rose from about \$200,000 million in 1940 to \$300,000 million in 1950 and to more than \$500,000 million in 1960. At the same time, the jump in postwar births, known as the "baby boom," increased the number of consumers. More and more Americans joined the middle class.

The need to produce war supplies had given rise to a huge military-industrial complex (a term coined by Dwight D. Eisenhower, who served as the U.S. president from 1953 through 1961). It did not disappear with the war's end.

As the Iron Curtain descended across Europe and the United States found itself embroiled in a cold war with the Soviet Union, the government maintained substantial fighting capacity and invested in sophisticated weapons such as the hydrogen bomb. Economic aid flowed to war-ravaged European countries under the Marshall Plan, which also helped maintain markets for numerous U.S. goods. And the government itself recognized its central role in economic affairs. The Employment Act of 1946 stated as government policy "to promote maximum employment, production, and purchasing power."

The United States also recognized during the postwar period the need to restructure international monetary arrangements, spearheading the creation of the International Monetary Fund and the World Bank -- institutions designed to ensure an open, capitalist international economy.

Business, meanwhile, entered a period marked by consolidation. Firms merged to create huge, diversified conglomerates. International Telephone and Telegraph, for instance, bought Sheraton Hotels, Continental Banking, Hartford Fire Insurance, Avis Rent-a-Car, and other companies.

The American work force also changed significantly. During the 1950s, the number of workers providing services grew until it equaled and then surpassed the number who produced goods. And by 1956, a majority of U.S. workers held white-collar rather than blue-collar jobs. At the same time, labor unions won long-term employment contracts and other benefits for their members.

Farmers, on the other hand, faced tough times. Gains in productivity led to agricultural overproduction, as farming became a big business. Small family farms found it increasingly difficult to compete, and more and more farmers left the land. As a result, the number of people employed in the farm sector, which in 1947 stood at 7.9 million, began a continuing decline; by 1998, U.S. farms employed only 3.4 million people.

Other Americans moved, too. Growing demand for single-family homes and the widespread ownership of cars led many Americans to migrate from central cities to suburbs. Coupled with technological innovations such as the invention of air conditioning, the migration spurred the development of "Sun Belt" cities such as Houston, Atlanta, Miami, and Phoenix in the southern and southwestern states. As new, federally sponsored highways created better access to the suburbs, business patterns began to change as well. Shopping centers multiplied, rising from eight at the end of World War II to 3,840 in 1960. Many industries soon followed, leaving cities for less crowded sites.

Years of Change: The 1960s and 1970s

The 1950s in America are often described as a time of complacency. By contrast, the 1960s and 1970s were a time of great change. New nations emerged around the world, insurgent movements sought to overthrow existing governments, established countries grew to become economic powerhouses that rivaled the United States, and economic relationships came to predominate in a world that increasingly recognized military might could not be the only means of growth and expansion.

President John F. Kennedy (1961-1963) ushered in a more activist approach to governing. During his 1960 presidential campaign, Kennedy said he would ask Americans to meet the challenges of the "New Frontier." As president, he sought to accelerate economic growth by increasing government spending and cutting taxes, and he pressed for medical help for the elderly, aid for inner cities, and increased funds for education. Many of these proposals were not enacted, although Kennedy's vision of sending Americans abroad to help developing nations did materialize with the creation of the Peace Corps. Kennedy also stepped up American space exploration. After his death, the American space program surpassed Soviet achievements and culminated in the landing of American astronauts on the moon in July 1969.

Kennedy's assassination in 1963 spurred Congress to enact much of his legislative agenda. His successor, Lyndon Baines Johnson (1963-1969), sought to build a "Great Society" by spreading benefits of America's successful economy to more citizens. Federal spending increased dramatically, as the government launched such new programs as Medicare (health care for the elderly), Food Stamps (food assistance for the poor), and numerous education initiatives (assistance to students as well as grants to schools and colleges).

Military spending also increased as American's presence in Vietnam grew. What had started as a small military action under Kennedy mushroomed into a major military initiative during Johnson's presidency. Ironically, spending on both wars -- the war on poverty and the fighting war in Vietnam -- contributed to prosperity in the short term. But by the end of the 1960s, the government's failure to raise taxes to pay for these efforts led to accelerating inflation, which eroded this prosperity. The 1973-1974 oil embargo by members of the Organization of Petroleum Exporting Countries (OPEC) pushed energy prices rapidly higher and created shortages. Even after the embargo ended, energy prices stayed high, adding to inflation and eventually causing rising rates of unemployment. Federal budget deficits grew, foreign competition intensified, and the stock market sagged.

The Vietnam War dragged on until 1975, President Richard Nixon (1969-1973) resigned under a cloud of impeachment charges, and a group of Americans were taken hostage at the U.S. embassy in Teheran and held for more than a year. The nation seemed unable to control events, including economic affairs. America's trade deficit swelled as low-priced and frequently high-quality imports of everything from automobiles to steel to semiconductors flooded into the United States.

The term "stagflation" -- an economic condition of both continuing inflation and stagnant business activity, together with an increasing unemployment rate -- described the new economic malaise. Inflation seemed to feed on itself. People began to expect continuous increases in the price of goods, so they bought more. This increased demand pushed up prices, leading to demands for higher wages, which pushed prices higher still in a continuing upward spiral. Labor contracts increasingly came to include automatic cost-of-living clauses, and the government began to peg some payments, such as those for Social Security, to the Consumer Price Index, the best-known gauge of inflation. While these practices helped workers and retirees cope with inflation, they perpetuated inflation. The government's ever-rising need for funds swelled the budget deficit and led to greater government borrowing, which in turn pushed up interest rates and increased costs for businesses and consumers even further. With energy costs and interest rates high, business investment languished and unemployment rose to uncomfortable levels.

In desperation, President Jimmy Carter (1977-1981) tried to combat economic weakness and unemployment by increasing government spending, and he established voluntary wage and price guidelines to control inflation. Both were largely unsuccessful. A perhaps more successful but less dramatic attack on inflation involved the "deregulation" of numerous industries, including airlines, trucking, and railroads. These industries had been tightly regulated, with government controlling routes and fares. Support for deregulation continued beyond the Carter administration. In the 1980s, the government relaxed controls on bank interest rates and long-distance telephone service, and in the 1990s it moved to ease regulation of local telephone service.

But the most important element in the war against inflation was the Federal Reserve Board, which clamped down hard on the money supply beginning in 1979. By refusing to supply all the money an inflation-ravaged economy wanted, the Fed caused interest rates to rise. As a result, consumer spending and business borrowing slowed abruptly. The economy soon fell into a deep recession.

The Economy in the 1980s

The nation endured a deep recession throughout 1982. Business bankruptcies rose 50 percent over the previous year. Farmers were especially hard hit, as agricultural exports declined, crop prices fell, and interest rates rose. But while the medicine of a sharp slowdown was hard to swallow, it did break the destructive cycle in which the economy had been caught. By 1983, inflation had eased, the economy had rebounded, and the United States began a sustained period of economic growth. The annual inflation rate remained under 5 percent throughout most of the 1980s and into the 1990s.

The economic upheaval of the 1970s had important political consequences. The American people expressed their discontent with federal policies by turning out Carter in 1980 and electing former Hollywood actor and California governor Ronald Reagan as president. Reagan (1981-1989) based his economic program on the theory of supply-side economics, which advocated reducing tax rates so people could employ more workers and keep more of what they earned. The theory was that lower tax rates would induce people to work harder and longer, and that this in turn would lead to more saving and investment, resulting in more production and stimulating overall economic growth. While the Reagan-inspired tax cuts served mainly to benefit wealthier Americans, the economic theory behind the cuts argued that benefits would extend to lower-income people as well because higher investment would lead new job opportunities and higher wages.

The central theme of Reagan's national agenda, however, was his belief that the federal government had become too big and intrusive. In the early 1980s, while he was cutting taxes, Reagan was also slashing social programs. Reagan also undertook a campaign throughout his tenure to reduce or eliminate government regulations affecting the consumer, the workplace, and the environment. At the same time, however, he feared that the United States had neglected its military in the wake of the Vietnam War, so he successfully pushed for big increases in defense spending.

The combination of tax cuts and higher military spending overwhelmed more modest reductions in spending on domestic programs. As a result, the federal budget deficit swelled even beyond the levels it had reached during the recession of the early 1980s. From \$74,000 million in 1980, the federal budget deficit rose to \$221,000 million in 1986. It fell back to \$150,000 million in 1987, but then started growing again. Some economists worried that heavy spending and borrowing by the federal government would re-ignite inflation, but the Federal Reserve remained vigilant about controlling price increases, moving quickly to raise interest rates any time it seemed a threat. Under chairman Paul Volcker and his successor, Alan Greenspan, the Federal Reserve retained the central role of economic traffic cop, eclipsing Congress and the president in guiding the nation's economy.

The recovery that first built up steam in the early 1980s was not without its problems. Farmers, especially those operating small family farms, continued to face challenges in making a living, especially in 1986 and 1988, when the nation's mid-section was hit by serious droughts, and several years later when it suffered extensive flooding. Some banks faltered from a combination of tight money and unwise lending practices, particularly those known as savings and loan associations, which went on a spree of unwise lending after they were partially deregulated. The federal government had to close many of these institutions and pay off their depositors, at enormous cost to taxpayers.

While Reagan and his successor, George Bush (1989-1992), presided as communist regimes collapsed in the Soviet Union and Eastern Europe, the 1980s did not entirely erase the economic malaise that had gripped the country during the 1970s. The United States posted trade deficits in seven of the 10 years of the 1970s, and the trade deficit swelled throughout the 1980s. Rapidly growing economies in Asia appeared to be challenging America as economic powerhouses; Japan, in particular, with its emphasis on long-term planning and close coordination among corporations, banks, and government, seemed to offer an alternative model for economic growth.

In the United States, meanwhile, "corporate raiders" bought various corporations whose stock prices were depressed and then restructured them, either by selling off some of their operations or by dismantling them piece by piece. In some cases, companies spent enormous sums to buy up their own stock or pay off raiders. Critics watched such battles with dismay, arguing that raiders were destroying good companies and causing grief for workers, many of whom lost their jobs in corporate restructuring moves. But others said the raiders made a meaningful contribution to the economy, either by taking over poorly managed companies, slimming them down, and making them profitable again, or by selling them off so that investors could take their profits and reinvest them in more productive companies.

The 1990s and Beyond

The 1990s brought a new president and new congressional leadership after 40 years. After unsuccessfully urging Congress to enact an ambitious proposal to expand health-insurance coverage, Clinton and Gingrich declared that the era of "big government" was over in America. They pushed to strengthen market forces in some sectors, working with Congress to open local telephone service to competition. He also joined Republicans to reduce welfare benefits. Still, although Bill Clinton and Newt Gingrich reduced the size of the federal work force, the government continued to play a crucial role in the nation's economy. Most of the major innovations of the New Deal, and a good many of the Great Society, remained in place. And the Federal Reserve system continued to regulate the overall pace of economic activity, with a watchful eye for any signs of renewed inflation.

The economy, meanwhile, turned in an increasingly healthy performance as the 1990s progressed. With the fall of the Soviet Union and Eastern European communism in the late 1980s, trade opportunities expanded greatly. Technological developments brought a wide range of sophisticated new electronic products. Innovations in telecommunications and computer networking spawned a vast computer hardware and software industry and revolutionized the way many industries operate. The economy grew rapidly, and corporate earnings rose rapidly. Combined with low inflation and low unemployment, strong profits sent the stock market surging; the Dow Jones Industrial Average, which had stood at just 1,000 in the late 1970s, hit the 11,000 mark in 1999, adding substantially to the wealth of many -- though not all -- Americans.

Japan's economy, often considered a model by Americans in the 1980s, fell into a prolonged recession -- a development that led many economists to conclude that the more flexible, less planned, and more competitive American approach was, in fact, a better strategy for economic growth in the new, globally-integrated environment.

America's labor force changed markedly during the 1990s. Continuing a long-term trend, the number of farmers declined. A small portion of workers had jobs in industry, while a much greater share worked in the service sector, in jobs ranging from store clerks to financial planners. If steel and shoes were no longer American manufacturing mainstays, computers and the software that make them run were.

After peaking at \$290,000 million in 1992, the federal budget steadily shrank as economic growth increased tax revenues. In 1998, the government posted its first surplus in 30 years, although a huge debt -- mainly in the form of promised future Social Security payments to the baby boomers -- remained. Economists, surprised at the combination of rapid growth and continued low inflation, debated whether the United States had a "new economy" capable of sustaining a faster growth rate than seemed possible based on the experiences of the previous 40 years.

Finally, the American economy was more closely intertwined with the global economy than it ever had been. Clinton and Gingrich, like their predecessors, had continued to push for elimination of trade barriers. A North American Free Trade Agreement (NAFTA) had further increased economic ties between the United States and its largest trading partners, Canada and Mexico. Asia, which had grown especially rapidly during the 1980s, joined Europe as a major supplier of finished goods and a market for American exports. Sophisticated worldwide telecommunications systems linked the world's financial markets in a way unimaginable even a few years earlier.

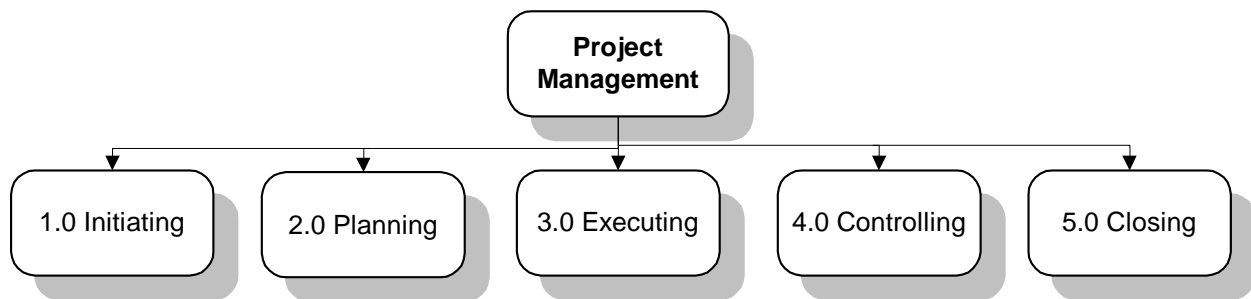
While many Americans remained convinced that global economic integration benefited all nations, the growing interdependence created some dislocations as well. Workers in high-technology industries -- at which the United States excelled -- fared rather well, but competition from many foreign countries that generally had lower labor costs tended to dampen wages in traditional manufacturing industries. Then, when the economies of Japan and other newly industrialized countries in Asia faltered in the late 1990s, shock waves rippled throughout the global financial system. American economic policy-makers found they increasingly had to weigh global economic conditions in charting a course for the domestic economy.

Still, Americans ended the 1990s with a restored sense of confidence. By the end of 1999, the economy had grown continuously since 1994, the longest peacetime economic expansion in history. Unemployment totaled just 4.1 percent of the labor force in November 1999 and has on average even been lower in between 2003-2007. Rebounding from the "*Stock Market Bubble*" and recession of the late 90's was a challenge, but the American Economy moves forward.. Many challenges lay ahead, but the nation had weathered the 20th century -- and the enormous changes it brought -- in good shape.
<http://usinfo.state.gov/products/pubs/oecon/chap12.htm>

Project Management

Project Management Process Model

This section describes the Project Management Process. It communicates a path of actions that constitute a project. We expect that a project will tailor the steps outlined in this document to fit its resources, timeline, and scope or business objectives. The model shown depicts the five phases of a project.



Initiating	Recognizing that a project or phase should begin and committing to do so.
2.0 Planning	Devising and maintaining a workable scheme to accomplish the business need that the project was undertaken to address.
3.0 Executing	Coordinating people and other resources to carry out the plan.
4.0 Control	Ensuring the project objectives are met by monitoring and measuring progress and taking corrective action when necessary.
5.0 Closing	Formalizing the acceptance of the project or phase and bringing it to an orderly end.

The Steps to Management and Performance ix

1: Establishing Management

- An Introduction to Performance-Based Management
- Step 1: Define Organizational Mission and Strategic Performance Objectives
- Step 2: Establish an Integrated Performance Measurement System
- Step 3: Establish Accountability for Performance
- Step 4: Establish a System/Process for Collecting Data to Assess Performance
- Step 5: Establish a System/Process for Analyzing, Reviewing, and Reporting Performance Data
- Step 6: Establish a System/Process for Using Performance Information to Drive Improvement
- Maintaining a Performance-Based Management Program

2: Establishing an Integrated Performance Measurement System

- Understanding Performance Measurement
- Establishing an Integrated Performance Measurement System
- Choosing a Performance Measurement Framework

Establishing and Maintaining a Performance-Based Management Program 1

- Developing Performance Measures—Getting Organized
- Developing Performance Measures—Sample Approaches
- Maintaining an Integrated Performance Measurement System

3: Establishing Accountability for Performance

- The Concept of Accountability
- Establishing Accountability for Performance
- Accountability Tools

4: Collecting Data to Assess Performance

- Determining Data Needs
- Components of a Data Collection Plan
- Data Collection Considerations
- Data Collection Methods
- Suggestions for Measuring R&D Activities

5: Analyzing, Reviewing, and Reporting Performance Data

- Introduction to Data Analysis
- Training Your Organization in Analysis Skills
- Generating Useful Information - 1: Question Review
- Generating Useful Information - 2: Data Collection and Organization
- Generating Useful Information - 3: Data Analysis
- Generating Useful Information - 4: Data Presentation

6: Using Performance Information to Drive Improvement

- Using Performance Information to Drive Improvement
- Benchmarking
- Reengineering
- Continuous Improvement
- Process Improvement

Project management is the [discipline](#) of [planning](#), [organizing](#), securing and [managing resources](#) to bring about the successful completion of specific engineering project goals and objectives. It is sometimes conflated with [program management](#), however technically it is actually a higher level construction: a group of related and somehow interdependent engineering projects. A [project](#) is a temporary endeavor, having a defined beginning and end (usually constrained by date, but can be by funding or deliverables),^[1] undertaken to meet unique goals and objectives,^[2] usually to bring about beneficial change or added value. The temporary nature of projects stands in contrast to [business as usual \(or operations\)](#),^[3] which are repetitive, permanent or semi-permanent functional work to produce products or services. In practice, the [management](#) of these two systems is often found to be quite different, and as such requires the development of distinct technical skills and the adoption of separate management. Wikipedia....

Legal Studies and Terms

Glossary ^x

- A -

abandonment - A parent's or custodian's act of leaving a child without adequate care, supervision, support or parental contact for an excessive period of time. Also, the desertion of one spouse by the other with the intent to terminate the marriage relationship.

abstract of record - A short, abbreviated form of the case as found in the record.

accessory - A person who assists in the commission of a crime, either before or after the fact.

action in personam- An action against the person, founded on personal liability, in contrast to action in rem, an action for the recovery of a specific object, usually an item of personal property such as an automobile.

adjudication - Giving or pronouncing a judgment or decree, or the rendering of a decision on a matter before a court.

admissible evidence - Evidence which can legally and properly be used in court.

admission - A statement tending to establish the guilt or liability of the person making the statement.

adversary system - The system of trial practice in the United States and some other countries in which each of the opposing, or adversary, parties has the opportunity to present and establish opposing contentions before the court.

affidavit- A written and sworn statement witnessed by a notary public or another official possessing the authority to administer oaths. Affidavits may be admitted into evidence.

agent - One who has authority to act for another.

alibi - A defense claim that the accused was somewhere else at the time a crime was committed.

allegation - The assertion, declaration, or statement of a party to an action, made in a pleading, establishing what the party expects to prove.

Alternative Dispute Resolution (ADR) - Methods of resolving disputes outside of official court proceedings. These methods include mediation arbitration, and conciliation.

amicus curiae - A friend of the court; a nonparty who interposes, with the permission of the court, and volunteers information upon some matter before the court.

annual review - Yearly judicial review, usually in juvenile dependency cases, to determine whether the child requires continued court supervision or placement.

answer - A pleading by which defendant responds to the plaintiff's complaint.

appeal - The bringing of a case to a higher court for review of a lower court's order or judgment.

appearance - The formal proceeding by which defendant submits to the jurisdiction of the court.

appellant - The party appealing a final decision or judgment.

appellate court - A court which hears appeals from a lower court.

appellate jurisdiction - The appellate court has the right to review and revise the lower court decision.

appellee - The party against whom an appeal is taken.

arraignment - In a misdemeanor case, the initial appearance before a judge at which the criminal defendant enters a plea; in a felony case, the proceeding after the indictment or bindover at which the defendant comes before a judge in District Court, is informed of the charges, enters a plea, and has a date set for trial or disposition. In Juvenile Court, the first hearing after a petition has been filed.

arrest of judgment - Postponing the effect of a judgment already entered.

assault - A willful attempt to illegally inflict injury on or threaten a person.

assumption of risk - In tort law, a defense to a personal injury suit. The essence of the defense is that the plaintiff assumed the known risk of whatever dangerous condition caused the injury.

attorney of record - Attorney whose name appears in the permanent records or files of a case.

- B -

bail - In criminal cases, a sum of money posted by or on behalf of a defendant to guarantee his appearance in court after being released from jail;

bail bond- An obligation signed by the defendant, with sureties, to secure his/her presence in court;

bail bondsman - A person who posts bail in exchange for a fee, usually 10 percent of the total bail.

bailiff - A court officer whose duties are to keep order in the courtroom and to have custody of the jury.

battered child syndrome (B.C.S.) - Physical condition of a child indicating that external or internal injuries result from acts committed by a parent or custodian. Also termed Parent Infant Trauma Syndrome (P.I.T.S.).

battery - Actual physical violence, whether serious or minor, inflicted on a person. (A mere threat is called assault, whereas the completed act is called battery).

bench trial - Trial without a jury in which the judge decides the case.

bench warrant - An order issued by the court for the arrest of a person.

beyond a reasonable doubt - Entirely convinced; in a criminal case the defendant's guilt must be proven to the jury to this extent. This is the highest burden of proof any party has in any proceeding

bind over - A judge's decision to hold a criminal defendant for trial.

brief - A lawyer's written statement of a client's case filed in court. It usually contains a summary of the facts in the case, the pertinent laws, and an argument of how the law applies to the facts supporting the client's position.

burden of proof - The duty to establish a claim or allegation by admissible evidence. This is usually the duty of the plaintiff in a civil case and always is the duty of the state in a criminal case.

burglary - The unlawful breaking into or entering of a building or dwelling with the intent to commit a serious crime or theft.

- C -

calendar - A court's list of cases for arraignment, hearing, trial or arguments.

caption - The heading or introductory clause of papers connected with a case in court, which shows the names of the parties, name of the court, docket number of the case, etc.

case law - The law made by courts interpreting cases and laws as opposed to law made by legislatures. In the American system, the primary sources of law are 1) constitutions, 2) statutes/regulations, and 3) case law.

cause of action - A claim in law in fact sufficient to justify a legal right to sue.

certification - Generally used to refer to the process of transferring a minor's case from the Juvenile Court to the adult court for trial. Usually reserved for capital or first degree felonies or for chronic offenders.

certiorari - See writ of certiorari.

challenge to the array - Questioning the qualifications of an entire jury panel, usually on the grounds of partiality or some fault in the process of summoning the panel.

chambers - A judge's private office in the courthouse.

change of venue - The removal of a suit begun in one county or district to another for trial, or from one court to another in the same county or district. In criminal cases, for example, a change of venue will be permitted if the court feels the defendant cannot receive a fair trial where the court is located.

charge - The statement accusing a person of committing a particular crime. Also the judge's instructions to the jury on its duties, on the law involved in the case and on how the law in the case must be applied.

child abuse - Any form of cruelty to a child's physical, moral or mental well-being.

circumstantial evidence - All evidence of an indirect nature. Testimony not based on actual personal knowledge or observation of the facts in controversy.

citation - An order of the court requiring the appearance of a defendant on a particular day to answer to a particular charge.

civil case - A lawsuit brought to enforce, redress, or protect private rights or to gain payment for a wrong done to a person or party by another person or party. In general, all types of actions other than criminal proceedings.

clerk of the court - Court official who keeps court records, files pleadings, motions, and judgments, and administers the oath to jurors and witnesses.

code - A collection, compendium or revision of laws, rules and regulations enacted by the legislature, i.e., Utah Code Annotated.

codicil - A supplement or an addition to a will. It may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in the existing will.

commit - To send a person to prison or jail in criminal proceedings, or to another institution in civil cases by authority of a court.

common law - General provisions of law existing before codification or interpretation by courts.

commutation - The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment. In Utah this may be done by the Board of Pardons.

comparative negligence - The degree to which a person contributed to his/her own injury, damage or death. Usually measured in terms of percentage. Contributory negligence is the failure to exercise care by a plaintiff, which contributed to the plaintiff's injury.

competency - A witness's ability to observe, recall and recount under oath what happened. Criminal defendants must also be competent to stand trial; they must understand the nature of the proceedings and have the ability to assist their lawyers.

complainant - Synonymous with "plaintiff," or, in criminal cases, the complaining witness.

complaint - The first pleading on the part of the plaintiff in a civil action.

concurrent jurisdiction - The jurisdiction of two or more courts, each authorized to deal with the same subject matter.

concurrent sentence - Sentence under which two or more prison or jail terms are served simultaneously, and the prisoner is entitled to discharge when the longest term specified expires (i.e., sentences of 1 to 15 years and 0 to 5 years means a maximum sentence of 15 years). Differs from a consecutive sentence, which is when the sentences are served back-to-back. (A 1 to 15 and 0 to 5 consecutive sentence could mean up to 20 years).

condemnation - The legal process by which real estate of a private owner is taken for public use without the owner's consent, but the owner receives "just compensation."

conditional release - A release from custody which imposes regulations on the activities and associations of the defendant. If a defendant fails to meet the conditions, the release is revoked.

contempt of court - Any act involving disrespect to the court or failure to obey its rules or orders. Contempt of court carries a maximum of 30 days in jail.

continuance - A court order postponing proceedings.

contract - An oral or written agreement between two or more parties which is enforceable by law.

conviction - In a criminal case, a finding that the **defendant** is guilty.

corpus delicti - The substance or foundation of a crime; the substantial fact that a crime has been committed, e.g., the corpse of a homicide victim, the charred remains of a burned house.

corroboration - Confirmation or support of a witness' statement or other fact.

corroborating evidence - Evidence supplementary to that already given and tending to strengthen or confirm it.

court reporter - A court official who records testimony and arguments, and transcribes it into a permanent record of all court proceedings.

costs - An allowance for expenses in prosecuting or defending a suit. Ordinarily this does not include attorney fees.

counterclaim - A claim presented by a **defendant** in a civil proceeding in opposition to the claim of a **plaintiff**.

courts of record - Courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt. In Utah, they include the Supreme Court, the Court of Appeals, district courts and juvenile courts. Courts not of record are those of lesser authority whose proceedings are not permanently recorded, i.e., the Justice Courts.

criminal case - A case brought by the government against a person accused of committing a crime.

criminal insanity - Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong.

cross-claim - In a civil proceeding, if there are two or more defendants, one **defendant** can raise a claim against another defendant.

cross-examination - The questioning of a witness by the lawyer for the opposing side. This may be done by leading questions, questions which suggest the answer.

custody - The right to or responsibility for a child's care and control, carrying with it the duty of providing food, shelter, medical care, education and discipline.

- D -

damages - Money that a court orders paid to party (usually the **plaintiff**) who has suffered a loss by another party who caused the loss (usually the **defendant**).

declaratory judgment - One which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

decree - A decision or order of the court. A final decree is one which fully and finally disposes of the litigation. An interlocutory decree is a preliminary decree which is not final.

defamation - The making of false, derogatory statements about a person's character, morals, abilities, business practices or financial status. (Includes libel, which is written, and slander, which is spoken).

default - Occurs when a defendant fails to respond to the plaintiff's complaint within the time allowed, or fails to appear at the trial. The court may then enter a default **judgment**.

defendant - The accused in a criminal case; the person from whom money or other recovery is sought in a civil case.

deferred sentence - The court retains jurisdiction to sentence the defendant at a later time.

deliberation - The jury's decision-making process after hearing the evidence and closing arguments and being given the court's instructions.

delinquency - The commission of an illegal act by a juvenile.

dependent child - A child who is homeless or without proper care through no fault of the parent, guardian, or custodian.

deposition - The taking of testimony of a witness under oath outside of court, usually transcribed in writing by a court reporter, or less frequently, recorded on videotape.

deprivation of custody - The court transfers legal custody of a person from parents or legal guardian to another person, agency or institution. It may be temporary or permanent.

detention hearing - In Juvenile Court, a judicial hearing, usually held after the filing of a petition, to determine interim custody of a minor pending a **judgment**.

direct evidence - Evidence in the form of testimony from a witness who actually saw, heard, or touched the subject of interrogation.

direct examination - The first questioning of a witness by the attorney for the party on whose behalf the witness is called. Usually proceeds with open ended, non leading questions.

directed verdict - In civil cases in which there is insufficient basis for any other conclusion, the judge may direct the jury to render a specific verdict. Criminal defendants may also ask the court to rule in their favor rather than submitting the case to the jury.

discovery - The process through which parties to an action are allowed to obtain relevant information known to other parties or nonparties before trial.

dismissal without prejudice - A dismissal which permits the plaintiff to sue again on the same cause of action or the state to proceed again. Dismissal with prejudice bars the right to subsequently bring an action on the same cause.

disposition - The order of a Juvenile Court determining what is to be done with a minor already adjudged to be within the court's jurisdiction. In criminal or civil cases, the settlement of a case.

dispositional report - In Juvenile Court, a written report relating to the child's mental, physical, and social history, submitted by the juvenile probation department or other designated agency to assist the judge in determining a proper disposition.

dissent - A term commonly used to denote the disagreement of one or more judges of a court of appeals with the decision of the majority.

diversion - Procedures for handling relatively insignificant juvenile problems informally, without referral to Juvenile Court. In criminal cases, the formal continuance of a case for a certain length of time, usually a year, with the goal of dismissal if the defendant meets certain conditions.

docket - A brief entry or the book containing such entries of any proceeding in court.

domicile - That place where a person has his true and permanent home. A person may have several residences, but only one domicile.

double jeopardy - Common law and constitutional prohibition (5th Amendment) against more than one prosecution for the same crime.

due process - The guarantee of due process requires that no person be deprived of life, liberty, or property without a fair and adequate process. In criminal proceedings (as well as juvenile) this guarantee includes the fundamental aspects of a fair trial, including the right to adequate notice in advance of the trial, the right to counsel, the right to confront and

cross-examine witnesses, the right to refuse self-incriminating testimony, and the right to have all elements of the crime proven beyond a reasonable doubt.

- E -

embezzlement - The fraudulent appropriation by a person to his own use or benefit of property or money entrusted to him by another.

eminent domain - The power to take private property for public use by the state and municipalities.

en banc - A proceeding in which the entire membership of an appellate court participates in the decision, rather than leaving the decision to a smaller "panel" of the court's members. In Utah, the Court of Appeals is prohibited from sitting en banc.

enjoin - See [injunction](#).

entrapment - In criminal procedures, a complete defense. The defendant must show that officers induced the defendant to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.

equity, courts of - Courts which administer a legal remedy according to the system of equity, as distinguished from courts of common law. The English system upon which most American states modeled their court systems included two separate sets of courts: equity and law. Although Utah has now combined the two in a single system, courts continue to refer to their powers in equity as distinct from their functions as courts of law. Equitable powers are flexible and try to do justice. Courts of law are rigid and must act strictly according to the law.

escheat - In American law, the right of the state to an estate left vacant, to which no one makes a valid claim. Property of a decedent who had no will and no heirs escheats to the state.

escrow - A writing, deed, money, stock, or other property is given to a third person to hold until all conditions in a contract are fulfilled.

estate - A collective term meaning all real and personal property owned by a person.

estoppel - A person's own act, or acceptance of facts, which preclude later claims to the contrary.

et al - An abbreviation of et alii, meaning "and others," ordinarily used in lieu of listing all names of persons involved in a proceeding.

et seq - An abbreviation for et sequentes, or et sequentia, "and the following," ordinarily used in referring to a section of statutes.

evidence - Testimony, records, documents, material objects, or other things presented at a trial to prove the existence or nonexistence of a fact.

exclusionary rule - A rule by which evidence that was obtained illegally cannot be used in a criminal trial against a defendant. Also, in criminal cases, a rule which prevents witnesses from observing each other testify or from discussing testimony during the course of the proceedings.

exclusion of witnesses - An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant. The witnesses are ordered not to discuss their testimony with each other and may be held in contempt if they violate the order.

exclusive jurisdiction - The matter can only be filed in one court.

executor - A person assigned to carry out the provisions of a will.

exhibit - A paper, document or other article presented and offered into evidence in court during a trial or hearing to prove the facts of a case.

ex parte - By or for one party only. Ordinarily courts are not allowed to engage in communications with one party only (ex parte communications). Both parties must be heard.

expert testimony - Testimony given in relation to some scientific, technical or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

ex post facto - After the fact, ordinarily used in reference to constitutional prohibition on ex post facto laws. For example, a person cannot be punished for conduct committed before a criminal law was enacted.

expungement - A court order allowing the destruction or sealing of records of minors or adults, after the passage of a specified period of time or when the person reaches a specified age and has not committed another offense.

extradition - The surrender by one state to another of an individual accused or convicted of an offense outside its own territory, and within the territorial jurisdiction of the other.

extraordinary writ - A writ, often issued by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of **habeas corpus**, **mandamus**, prohibition and quo warranto.

- F -

false arrest - Any unlawful physical restraint of another's personal liberty, whether or not carried out by a peace officer.

false pretenses - Representation of some fact or circumstance which is not true and is calculated to mislead, whereby a person obtains another's money or goods.

fee simple absolute - The most complete, unlimited form of ownership of real property.

felony - A felony is a major crime for which the maximum imprisonment is more than one year in a state correctional institution. The court may also impose a fine. Felonies are classified into four categories: capital, 1st degree, 2nd degree, and 3rd degree.

fiduciary - A person who has assumed a special relationship to another person or another person's property, such as a trustee, administrator, executor, lawyer, or guardian. The fiduciary must exercise the highest degree of care to maintain and preserve the person's rights and/or property which are within his/her charge.

Fifth Amendment - Among other rights, the Fifth Amendment to the U.S. Constitution guarantees that a person cannot be compelled to present self-incriminating testimony in a criminal (or juvenile) proceeding.

fine - A sum of money paid as part of a penalty of conviction for a particular criminal offense.

fitness hearing - A hearing held in Juvenile Court to determine the fitness of a minor for retention in Juvenile Court, and the minor's amenability to Juvenile Court resources. Must be held before any evidence is heard on a petition for detention. Such a hearing is a prerequisite to transfer of a minor's case to adult court. Also called certification hearing.

forcible entry and detainer - Ordinarily refers to a summary proceeding for restoring possession of land to one who has been wrongfully deprived of possession.

foreclosure - A termination of all rights of the mortgagor or his grantee in the property covered by the mortgage.

forfeiture - The concept of forfeiture is used in a variety of settings in the legal system. For example, property such as an automobile or house that is used in the commission of a crime i.e., selling a controlled substance, may be forfeited to the state in a civil proceeding.

foster care - A form of substitute care, usually in a home licensed by a public agency, for children whose welfare requires removal from their homes.

foundation - In a trial, a foundation must be laid to establish the basis for the admissibility of certain types of evidence. For example, an expert witnesses' qualifications must be shown before expert testimony will be admissible.

Fourteenth Amendment - Among other matters, the 14th Amendment to the U.S. Constitution prohibits states from depriving any person of life, liberty, or property without adequate due process.

Fourth Amendment - The 4th Amendment to the U.S. Constitution protects every person against unreasonable search and seizure by government officials.

fraud - An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right.

- G -

garnishment - A court order to take part of a person's wages, before he gets them, and apply the amount taken to pay a debt owed to a creditor.

grand jury - A group of citizens impaneled to hear evidence and decide whether a defendant should be charged with a crime. The grand jury is used frequently in federal courts, but rarely in Utah state courts.

guardian ad litem - In Utah State Court proceedings, a lawyer appointed by a court to look after the interests of an infant, child or incompetent person during court proceedings.

guardian - A guardian has the authority to consent, on behalf of an infant, child or incompetent, to marriage, enlistment in the armed forces, or major medical, surgical, or psychiatric treatment. Includes legal custody.

- H -

habeas corpus - Latin phrase meaning "you have the body"; A civil proceeding used to review the legality of a prisoner's confinement in criminal cases. Habeas corpus actions are commonly used as a means of reviewing state or federal criminal convictions. The petitioner alleges the convictions violated state or federal constitutional rights. State

habeas proceedings start in state District Court; federal habeas proceedings start in federal District Court. Lower court decisions may be appealed to appellate courts.

harmless error - An error committed by a lower court during a trial, but not prejudicial to the rights of the party and for which the appellate court will not reverse the judgment.

hearing - A formal proceeding (generally less formal than a trial) with definite issues of law or of fact to be heard.

hearing de novo - A full new hearing.

hearsay - Second-hand evidence, generally consisting of a witness's testimony that he/she heard someone else say something.

holographic will - A will entirely written, dated and signed by the testator in his/her own handwriting.

hostile witness - A witness who displays antagonism toward the party who called him to testify, or who is a witness for the opposing party. The examining party is allowed to conduct direct examination as if it were cross-examination.

hung jury - A jury which cannot agree on a final verdict. If a jury is hung, the court declares a mistrial and the case may be re-tried.

hypothetical question - A form of question generally used for expert witnesses. The examiner states a factual foundation (often based on disputed facts) and asks the expert to draw conclusions based on the hypothetical foundation. The hypothetical question includes only facts already in evidence.

- I -

immunity - Legal protection from liability. There are many categories of immunity in civil and criminal law. For example, sovereign immunity protects government agencies from civil liability and judicial immunity protects judges acting in their official capacities.

impanel - To seat a jury. When **voir dire** is finished and both sides have exercised their challenges, the jury is impanelled. The jurors are sworn in and the trial is ready to proceed.

impeachment of witness - An attack on the credibility of a witness.

inadmissible/incompetent evidence - Information which is so unreliable it cannot be admitted under the established rules of evidence.

in camera - In a judge's chambers; in private.

incarceration - Imprisonment; confinement in a jail or penitentiary.

incest - The crime of sexual intercourse between a male and a female who are so closely related they would not legally be allowed to marry.

indeterminate sentence - An indefinite sentence of imprisonment, within a specified range (e.g. "5 to life") with the Board of Pardons later determining the exact term to be served.

indictment - An accusation of a criminal offense made by a grand jury.

information - The first paper filed in criminal prosecution which states the crime of which the defendant is accused.

injunction - A court order forbidding or requiring a certain action.

in loco parentis - "In the place of the parent"; refers to actions of a custodian, guardian or other person acting in the parent's place.

instruction - A direction given by the judge to the jury concerning the law to be applied in the case.

inter alia - Among other things.

interlocutory appeal - An appeal to an appellate court of a temporary or provisional order of a trial court. The appellate court is not required to hear the appeal.

interrogatories - In the discovery phase of civil litigation, these written questions are submitted by one party to another party and must be answered in writing under oath.

interstate compact - A contract between member states to supervise juveniles on probation or parole, and to return delinquent juveniles who have escaped or nondelinquent juveniles who have run away, from one state to another.

intervention - A proceeding in a civil suit by which a third person is permitted by the court to join as a party to the suit.

intestate - The status of a person who dies without leaving a will.

irrelevant - Evidence not sufficiently related to the matter in issue.

- J -

judgment - The official decision of a court disposing of a case.

jurisdiction - The legal authority of a court to hear a case or conduct other proceedings; power of the court over persons involved in a case and the subject matter of the case.

jurisprudence - Formal study of the principles on which legal rules are based and the means by which judges guide their decision making.

jury commissioner - An officer charged with the duty of selecting the names to be put into a jury wheel, or of drawing the panel of jurors for a particular term of court.

- L -

law and motion - A setting before a judge at which time a variety of motions, pleas, sentencings, orders to show cause or procedural requests may be presented. Normally, evidence is not taken. Defendants must be present.

leading question - One which virtually instructs a witness how to answer or puts into his mouth words to be echoed back; one which suggests to the witness the answer desired. Ordinarily prohibited on direct examination, although allowed on cross-examination.

levy - A seizure; the obtaining of money by legal process through seizure and sale of property.

liability - A legal responsibility, obligation, or debt.

libel - See defamation.

lien - A claim against property for payment of a debt. Common types of liens include the mechanic's lien, the judgment lien, and the mortgage lien.

lis pendens - A pending suit.

litigant - A party to a lawsuit; one engaged in litigation.

locus delicti - The place of the offense.

- M -

malfeasance - Unlawful conduct.

malicious prosecution - A meritless (civil or criminal) action instituted solely to harass the defendant. Such misuse of the judicial process may be the basis for an action against the original plaintiff/prosecutor.

malpractice - A lawsuit brought against a professional person, such as a doctor, lawyer or engineer, for injury or loss caused by the defendant's negligence in providing professional services.

mandamus - A writ by which a court commands the performance of a particular act.

manslaughter - A person recklessly causes the death of another, or acting under extreme emotional disturbance, causes the death of another, or acting under circumstances when a person reasonably believes the circumstances provide a legal justification or excuse for his conduct constitutes manslaughter.

material evidence - Evidence which is relevant to the issues in a case.

mens rea - Literally, "guilty mind." The intent required to commit the crime. One of the two basic requirements, along with the guilty act (actus reus) which constitute a crime.

Miranda rule - The rule, pronounced in *Miranda v. Arizona*, that confessions are inadmissible in a criminal prosecution if the police do not advise the suspect in custody of certain rights before questioning. The rights include:

- a. The right to remain silent and to refuse to answer any questions;
- b. The right to know that anything the suspect says can and will be used against the suspect in a court of law;
- c. The right to consult with an attorney and to have an attorney present during questioning;
- d. The right to have counsel appointed at public expense, prior to any questioning if the suspect cannot afford counsel.

misdemeanor - A minor offense, lower than a felony, which is punishable by a county jail term of up to one year and/or a fine, but not prison. Misdemeanors are classified into three categories: Class A, B, and C.

mistrial - A trial which is void because of some error.

mitigating circumstance - A circumstance which may be considered to reduce the degree of moral culpability, although it does not entirely justify or excuse an offense.

moot - A moot point is one that need not be decided, due to a change of circumstances.

moral turpitude - Conduct contrary to honesty or good morals.

motion - A formal request presented to a court.

multiplicity of actions - Numerous and unnecessary attempts to litigate the same issue.

- N -

ne exeat - A writ which forbids the person to whom it is addressed to leave the country, the state or the jurisdiction of the court.

negligence - Failure to exercise the care that an ordinarily prudent person would exercise in the same circumstances.

no bill - This phrase, endorsed by a grand jury on an indictment, means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

no-fault divorce - A kind of divorce in which the parties need not cast blame on one another for the failure of the marriage.

nolle prosequi - A formal entry upon the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, declaring the case will not be prosecuted.

nolo contendere - A Latin phrase meaning "I will not contest it." A plea in a criminal case which does not require the defendant to admit guilt, but the defendant does not contest the facts on which the charge is based. Some judges refuse to accept such pleas in criminal cases.

nominal party - One who is joined as a party or defendant merely because the technical rules of pleading require his presence in the record.

non compos mentis - Not of sound mind; insane.

not guilty plea - Complete denial of guilt. In criminal cases, a necessary stage of the proceedings required to preserve all legal issues.

not guilty by reason of insanity - The jury or the judge must determine that the defendant, because of mental disease or defect, could not form the intent required to commit the offense.

- 0 -

objection - The act of taking exception to some statement or procedure in trial or other proceeding. Used to call the court's attention to improper evidence or procedure.

of counsel - A phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney for the party.

opinion evidence - Witnesses are normally required to confine their testimony to statements of fact and are not allowed to give their opinions in court. However, if a witness is qualified as an expert in a particular field, he or she may be allowed to state an opinion as an expert based on certain facts.

order to show cause - Court order requiring a party to appear and show cause why the court should not take a particular course of action. If the party fails to appear or to give sufficient reasons why the court should take no action, the court will take the action. In criminal cases, the defendant must show why probation should not be revoked.

ordinance - A written law enacted by the legislative body of a county, city, or town.

original jurisdiction - The court in which a matter must first be filed.

- P -

pardon - Action by an official of an executive branch of government relieving a criminal from a conviction.

Parent Infant Trauma Syndrome (P.I.T.S.) - See Battered Child Syndrome

parole - A procedure in which a parole board releases a convict on good behavior before the maximum sentence expires.

parol evidence - Oral or verbal evidence (rather than written). The parol evidence rule limits the admissibility of parol evidence which would directly contradict the clear meaning of terms of a written contract.

parties - The persons who are actively involved in the prosecution or defense of a legal proceeding, including the plaintiff or prosecution, the defendant and any "third party defendant".

peremptory challenge - Each party to a suit tried to a jury has the right to peremptorily "challenge" (reject) a certain number of prospective jurors without giving a reason. By contrast, the parties have unlimited rights to challenge jurors for good cause, but the judge must approve "for cause challenges." Parties may not exercise peremptory challenges on the basis of race or gender.

perjury - Lying while under oath.

petition - A civil pleading filed to initiate a matter in Juvenile Court, setting forth the alleged grounds for the court to take jurisdiction of the case and asking the court to do so and intervene.

petit jury - The ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

plaintiff - A person who files a lawsuit.

plea - The defendant's formal response to a criminal charge (guilty, not guilty, nolo contendere, not guilty by reason of insanity, and guilty and mentally ill).

plea bargaining - A process whereby the prosecutor and defense attorney negotiate a mutually satisfactory disposition of the case. The court and the defendant must approve of any settlements. For example, a guilty plea may be exchanged for a lesser charge or a sentencing recommendation, or for dismissal of one or more of the charges in a multi-count information, or for dismissal of another case.

pleading - The formal allegations by the parties of their respective claims and defenses.

polling the jury - A practice whereby the jurors are asked individually on the record whether they agreed, and still agree, to the verdict.

power of attorney - A written instrument authorizing another (not necessarily a lawyer) to act as one's agent or attorney.

precedent - A rule of law that is established by an appellate court in an earlier case serves as binding precedent in all subsequent similar cases.

prejudicial evidence - Evidence which might unfairly sway the judge or jury to one side or the other. For example, photographs of a gory murder scene might inflame a jury without providing useful evidence. May be excluded in criminal cases if prejudicial effect outweighs probative value.

prejudicial error - Synonymous with "reversible error"; an error which warrants the appellate court in reversing the judgment before it.

preliminary hearing - A probable cause hearing which screens felony criminal cases by deciding whether there is enough evidence to warrant a trial. If the judge determines there is sufficient evidence, the defendant is "bound over" for trial. The defendant may waive this hearing.

preliminary injunction - In civil cases when it is necessary to preserve the status quo prior to trial, the court may issue a preliminary injunction or temporary restraining order ordering a party to carry out a specified activity.

preliminary inquiry - In Juvenile Court, an investigation and study conducted by the probation department upon receiving a referral to determine whether further action should be taken.

premeditation - The planning of a crime preceding the commission of the act, rather than committing the crime on the spur of the moment.

preponderance of evidence - Evidence which is (even minimally) of greater weight or more convincing than the evidence which is offered in opposition to it. This is the standard by which a plaintiff must prove his/her case in a civil suit.

presentence report - An investigation conducted at the request of the court after a person has been found guilty of a crime. The purpose is to provide the court with extensive background information to determine the appropriate sentence. On felonies, usually done by the Department of Corrections, Division of Adult Probation & Parole (AP & P).

presentment (first appearance) - In felony cases, the first appearance before a judge at which the defendant is formally notified of the charges and a date is set for a preliminary hearing. No plea is entered at this stage. If, after the preliminary hearing, the case is bound over to the District Court, the defendant will enter a plea during arraignment in District Court. (Presentment is often incorrectly called arraignment.)

prima facie - Literally, "on its face." A fact presumed to be true unless disproved by some other evidence. In a criminal case, when the prosecution rests, the state's case is said to be prima facie, if the evidence so far introduced is sufficient to convict.

privileged communications - Confidential communications to certain persons that are protected by law against any disclosure, including forced disclosure in legal proceedings. Communications between lawyer and client, physician and patient, psychotherapist and patient, priest, minister or rabbi and penitent are typically privileged.

probable cause - A judicial finding that there exists reasonable grounds for belief that a person should be arrested or searched.

probate - The process of proving the validity of a will.

probation - A sentence releasing a convicted criminal into the community or a treatment facility under the supervision of a probation officer, requiring compliance with certain conditions. If the conditions are not met, the court orders an "Order to Show Cause" hearing as to why probation should not be revoked and the sentence imposed.

pro se - For himself; in his own behalf. One who does not retain a lawyer and appears for himself in court.

prosecutor - The name of the public officer who is appointed in each county to conduct criminal prosecutions on behalf of the state or people.

protective custody - In child abuse and neglect cases, the emergency removal of child from his home when the child would be in imminent danger if allowed to remain with the parent(s) or custodian(s).

protective supervision - A court order following a judgment on the ground of neglect or abuse, whereby the child is permitted to remain in his home, and supervision and assistance to correct the neglect or abuse is provided by the probation department or other agency designated by the court.

proximate cause - In a civil tort action such as a medical malpractice suit, the plaintiff must show that an act or omission of the defendant was a proximate cause of the plaintiff's injury or loss. Similarly, in a criminal action, the state must prove beyond a reasonable doubt that the defendant's action was the direct cause of the crime.

public defender - Lawyers regularly employed by the government to represent people accused of crimes who cannot afford to hire their own. The term may also be used to refer to a private firm receiving public money to defend indigent criminal defendants.

punitive damages - Money awarded to an injured person, over and above the measurable value of the injury, in order to punish the person who hurt him.

- Q -

quash - To overthrow; vacate; to annul or void a summons, indictment, bindover order or subpoena.

quid pro quo - What for what; something for something; giving one valuable thing for another.

- R -

reasonable doubt - A person accused of a crime is entitled to acquittal if, in the minds of the jury or judge, his or her guilt has not been proved beyond a "reasonable doubt"; the jurors are not entirely convinced of the person's guilt.

rebuttal evidence - Evidence given to explain, contradict, or disprove facts offered by the adverse party. In criminal cases, the state has the opportunity to rebut the defendant's case because it has the burden of proof.

recidivism - The continued, habitual or compulsive commission of law violations after first having been convicted of prior offenses.

recognizance - A kind of bail, consisting of a written promise to appear in court when required. Generally, when there is no good reason to suppose the accused in a criminal case will not appear when required or the accused is not a significant risk to the community, he or she will be released on his or her own recognizance.

redirect examination - Follows cross-examination, and is conducted by the party who first examined the witness.

referral - In Juvenile Court, a written report submitted by a law enforcement officer or other person who has reason to believe a juvenile has committed a crime that would place the child within the jurisdiction of the Juvenile Court.

relevant - Evidence that helps to prove a point or issue in a case.

remand - "To send back"; For example, an appellate court may remand a case to a lower court for retrial or for some change in disposition.

removal, order of - An order by a court directing the transfer of a case to another court. For example, when a case is proper for jurisdiction in federal court, the federal court may remove the case from the state court in which it was originally filed.

reporting statutes - State laws requiring certain designated persons (physicians, nurses, teachers) to report to the authorities suspected cases of child abuse and injuries.

res ipsa loquitur - Literally, "a thing that speaks for itself." In tort law, the doctrine which holds a defendant guilty of negligence without an actual showing that he or she was negligent. Its use is limited in theory to cases in which the cause of the plaintiff's injury was entirely under the control of the defendant, and the injury presumably could have been caused only by negligence.

res judicata - A rule of civil law that once a matter has been litigated and final judgment has been rendered by the trial court, the matter cannot be relitigated by the parties in the same court, or any other trial court. A court will use res judicata to deny reconsideration of a matter.

respondeat superior - Literally, "a superior (or master) must answer." The doctrine which holds that employers are responsible for the acts and omissions of their employees and agents, when done within the scope of the employees' duties.

respondent - 1) the person who is the subject of a petition, 2) the prevailing party in a court case against whom an appeal is taken.

rest - A party is said to "rest" or "rest his case" when he/she has presented all the evidence he/she intends to offer.

restitution - Court-ordered payment to restore goods or money to the victim of a crime by the offender.

restraining order - Similar to an injunction, commanding the party to leave the other party alone, usually in a divorce proceeding.

retainer - The fee which the client pays when he/she retains an attorney.

- S -

sealing - The closure of court records to inspection, except to the parties.

search and seizure, unreasonable - In general, an examination, without authority of law, of one's premises or person to find stolen property or contraband.

search warrant - An order issued by a judge or magistrate commanding a sheriff, constable, or other officer to search a specified location.

self-defense - The protection of one's person or property against some injury attempted by another. The law of "self defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages.

sentence - The judgment formally pronounced by the court upon the defendant after conviction in a criminal prosecution, imposing the punishment to be inflicted.

suspended sentence - A sentence ordered by the court but not imposed, which gives the defendant an opportunity to complete probation.

sentence, deferred - The court retains jurisdiction to sentence the defendant at a later time.

separate maintenance - Allowance ordered to be paid by one spouse to the other for support while the spouses are living apart but not divorced.

service of process - Notifying a person that he or she has been named as a party to a lawsuit or has been accused of some offense. Process consists of a summons, citation or warrant, to which a copy of the complaint is attached. Subpoenas are court orders which, if properly served, compel the attendance of the witness in court.

slander - See [Defamation](#).

small claims - A civil dispute in which the amounts of money involved is less than \$2,000. Persons usually are not represented by lawyers in small claims proceedings. Small claims are litigated in the small claims division of the District Court, or in the Justice Court.

sovereign immunity - The doctrine that a government or governmental agency cannot be sued without consent.

specific performance - A mandatory order in equity. Where monetary damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what the contract called for.

standard of proof - There are essentially three standards of proof applicable in most court proceedings. In criminal and delinquency cases, the offense must be proven beyond a reasonable doubt, the highest standard. In civil cases and neglect and dependency proceedings, the lowest standard applies by a mere preponderance of the evidence (more likely than not). In some civil cases, and in juvenile proceedings such a permanent termination of parental rights, an intermediate standard applies: proof by clear and convincing evidence.

stare decisis - The doctrine that, when a court has once laid down a principle of law applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same. This is a defining characteristic of the common law system followed in the U.S., Great Britain, and a few other nations.

status offense - Refers to misbehavior which would not be criminal if committed by an adult (e.g., truancy, runaway, etc.), but is defined as an offense when committed by a minor because of the minor's status.

statute - A law passed by the state legislature.

statute of limitations - A certain time allowed by statute in which litigation must be brought. In criminal cases, prosecution is barred if not brought within the statute of limitations.

stay - A stopping or arresting of a judicial proceeding by order of a court (e.g., a stay of enforcement of a judgment).

stipulation - An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless agreed to by the parties, and most stipulations must be in writing.

subpoena - An official order to appear in court (or at a deposition) at a specific time. Failure to obey a subpoena to appear in court is punishable as a contempt of court.

subpoena duces tecum - A special form of subpoena which commands a witness to produce certain documents or records in a trial or at a deposition.

substantive law - The law dealing with rights, duties and liabilities, as contrasted with procedural law, which governs the technical aspects of enforcing civil or criminal laws.

summons - A notice to the named person that an action has been commenced against him in court and that he is required to appear, on the day named, and answer the complaint.

suppression hearing - A hearing on a criminal defendant's motion to prohibit the prosecutor's use of evidence alleged to have been obtained in violation of the defendant's rights. This hearing is held outside of the presence of the jury, either prior to or at trial. The judge must rule as a matter of law on the motion.

- T -

temporary restraining order - See preliminary injunction.

termination of parental rights - A judicial proceeding freeing a child from all custody and control by parents, so the child can be adopted by others.

testate - One who has died leaving a will or one who has made a will.

testator - The person who makes a will. (female: testatrix)

testimony - Information or evidence given by a witness under oath.

tort - An injury or wrong committed, either with or without force, to the person or property of another, for which civil liability may be imposed.

transcript - The official record of proceedings in a trial or hearing.

trial - A judicial examination of issues between parties to an action.

trial by declaration or informal traffic hearing - Persons who receive a traffic citation have an option to appear before a judge in an informal hearing called Trial by Declaration. At this hearing, there are no prosecutors, police or witnesses present. The person simply tells the judge his/her side of the story and the judge takes what action he/she determines is appropriate. If the defendant disagrees with the judge at the informal hearing, he/she may request and receive a formal trial.

trial de novo - A new trial or retrial held in an appellate court in which the whole case is heard as if no trial had been heard in the lower court or administrative agency.

trust - A transaction in which the owner of real property or personal property (the trustor or settlor) gives ownership to a trustee, to hold and to manage it for the benefit of a third party, called the "beneficiary."

- U -

undue influence - Whatever destroys free will and causes a person to do something he would not do if left to himself. For example, a strong willed family member might be found to have used undue influence on an elderly person's drawing up of a will.

unlawful detainer - A detention of real estate without the consent of the owner or other person entitled to its possession.

- V -

venue - The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case. A change of venue, i.e., a change to a court in a different area may be sought under some circumstances.

verdict - The formal and unanimous decision or finding made by a jury.

voir dire - "To speak the truth". The questioning of potential jurors by the judge and the lawyers to determine any biases, prejudices or other reasons for disqualification.

- W -

waive - To give up a right or claim voluntarily.

waiver of immunity - A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental constitutional right that no person shall be compelled to be a witness against himself/herself.

warrant - A written order issued and signed by a judge or magistrate which allows the police to search a place and seize specified items found there (search warrant), or to arrest or detain a specified person (arrest warrant).

willful - A "willful" act is one done intentionally, as distinguished from an act done carelessly or inadvertently.

with prejudice - A dismissal "with prejudice" bars the right to bring or maintain another action on the same claim or cause.

without prejudice - A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

witness - One who testifies under oath to what he/she has seen, heard or otherwise observed.

writ - A petition to a court for some extraordinary relief, such as asking the court to release a defendant from imprisonment.

writ of certiorari - A procedure requesting appellate review. It is discretionary. If the writ is denied, the higher court refuses to hear the appeal and the judgment in the lower court stands unchanged. If the writ is granted, the higher court hears the appeal.

<http://www.utcourts.gov/resources/glossary.htm>

What is Intellectual Property? ^{xi}

Intellectual property is the information that makes it possible for businesses to earn money. Business assets are protected by laws that state that the people who created the property have **exclusive rights** to use that property – for any purpose, but most often for profit.

A trademark is a symbol or brand that is owned by the person who created it. In the United States, a **patent** guarantees that an inventor owns the rights to profit made from an invention for 17 years. A **copyright** means legal and exclusive rights to written material, either published or unpublished.

Intellectual property comprises two branches: **industrial property** and **artistic property**. Industrial property refers chiefly to inventions, trademarks, industrial designs and appellations of origin. For example, the Coca Cola Company owns the symbol that is known around the world for the soft drink that Coca Cola produces. Patents and copyrights are chiefly for literary, musical, artistic, photographic and audiovisual works. For example, on the back of a compact disc (CD) box, there is (in very small print) information about the patent and copyright for the music on that CD.

Elements of a Contract ^{xii}

- **Legal Capacity to Contract**
- **Offer**—A bid or proposal by a competent offeror that a contract be entered into
- **Acceptance**—The expression by the offeree of his/her assent to the offer and communication of that assent to the offeror
- **Lawful Purpose**
- **Consideration**—Something of value in the eyes of the law exchanged by the parties to bind the agreement
- **In Accordance with Law and Regulation**

Business Structures in the USA ^{xiii}

Sole Proprietorships

A sole proprietor is someone who owns an unincorporated business by himself or herself. However, if you are the sole member of a domestic limited liability company (LLC), you are not a sole proprietor if you elect to treat the LLC as a corporation.

If you are a sole proprietor use the information in the chart below to help you determine some of the forms that you may be required to file.

IF you are liable for:	THEN use Form:
Income Tax	1040 and Schedule C or C-EZ
Self-employment tax	Schedule SE
Estimated tax	1040-ES
Social security and Medicare taxes and income tax withholding	941 or 944 8109 (to make deposits)
Providing information on social security and Medicare taxes and income tax withholding	W-2 (to employee) W-2 and W-3 (to the Social Security Administration)
Federal unemployment (FUTA) tax	940 8109 (to make deposits)
Filing information returns for payments to nonemployees and transactions with other persons	See Information Returns
Excise Taxes	Refer to the Excise Tax web page

Partnerships

A partnership is the relationship existing between two or more persons who join to carry on a trade or business. Each person contributes money, property, labor, or skill, and expects to share in the profits and losses of the business.

A partnership must file an annual information return to report the income, deductions, gains, losses etc., from its operations, but it does not pay income tax. Instead, it "passes through" any profits or losses to its partners. Each partner includes his or her share of the partnership's income or loss on his or her tax return.

Partners are not employees and should not be issued a Form W-2. The partnership must furnish copies of Schedule K-1 (Form 1065) to the partners by the date Form 1065 is required to be filed, including extensions.

If you are a partnership or a partner (individual) in a partnership use the information in the charts below to help you determine some of the forms that you may be required to file.

Chart 1 (Partnership)

If you are a partnership then you may be liable for...	Use Form...
Annual return of income	1065
Employment taxes:	941 (943 for farm employees)
<ul style="list-style-type: none"> • Social security and Medicare taxes and income tax withholding • Federal unemployment (FUTA) tax • Depositing employment taxes 	940 8109
Excise Taxes	Refer to the Excise Tax Web page

Chart 2 (Individual Partners in a Partnership)

If you are a partner (individual) in a partnership then you may be liable for...	Use Form...
Income Tax	1040 and Schedule E
Self-employment tax	1040 and Schedule SE
Estimated tax	1040-ES

Limited Liability Company (LLC)

A Limited Liability Company (LLC) is a relatively new business structure allowed by state statute.

LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation.

Owners of an LLC are called members. Since most states do not restrict ownership, members may include individuals, corporations, other LLCs and foreign entities. There is no maximum number of members. Most states also permit “single member” LLCs, those having only one owner.

A few types of businesses generally cannot be LLCs, such as banks and insurance companies. Check your state’s requirements and the federal tax regulations for further information. There are special rules for foreign LLCs.

For additional information on the kinds of tax returns to file, how to handle employment taxes and possible pitfalls, refer to [Publication 3402](#), Tax Issues for Limited Liability Companies.

S Corporations

An eligible domestic corporation can avoid double taxation (once to the shareholders and again to the corporation) by electing to be treated as an S corporation. Generally, an S corporation is exempt from federal income tax other than tax on certain capital gains and passive income. On their tax returns, the S corporation's shareholders include their share of the corporation's separately stated items of income, deduction, loss, and credit, and their share of nonseparately stated income or loss.

If you are an S corporation use the information in the charts below to help you determine some of the forms that you may be required to file.

Chart 1 - S Corporation

If you are an S corporation then you may be liable for...	Use Form...
Income Tax	1120S (S corporation)
Estimated tax	1120-W (corporation only) and 8109
Employment taxes: <ul style="list-style-type: none"> • Social security and Medicare taxes and income tax withholding • Federal unemployment (FUTA) tax • Depositing employment taxes 	941 (943 for farm employees) 940 8109
Excise Taxes	Refer to the Excise Tax web page

Chart 2 - S Corporation Shareholders

If you are an S corporation shareholder then you may be liable for...	Use Form...
Income Tax	1040 and Schedule E
Estimated tax	1040-ES

Corporations

In forming a corporation, prospective shareholders exchange money, property, or both, for the corporation's capital stock. A corporation generally takes the same deductions as a sole proprietorship to figure its taxable income. A corporation can also take special deductions.

The profit of a corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends.

However, shareholders cannot deduct any loss of the corporation.

If you are a corporation or an S corporation use the information in the charts below to help you determine some of the forms that you may be required to file.

Chart 1 - Corporation or S Corporation

If you are a corporation or an S corporation then you may be liable for...	Use Form...
Income Tax	1120 or 1120-A (corporation) 1120S (S corporation)
Estimated tax	1120-W (corporation only) and 8109
Employment taxes: <ul style="list-style-type: none"> • Social security and Medicare taxes and income tax withholding • Federal unemployment (FUTA) tax • Depositing employment taxes 	941 (943 for farm employees) 940 8109
Excise Taxes	Refer to the Excise Tax web page

Chart 2 - S Corporation Shareholders

If you are an S corporation shareholder then you may be liable for...	Use Form...
Income Tax	1040 and Schedule E
Estimated tax	1040-ES

<http://www.irs.gov/businesses/small/article/0,,id=98359,00.html>

Summary of the Major Laws of the Department of Labor

The Department of Labor (DOL) administers and enforces more than 180 federal laws. These mandates and the regulations that implement them cover many workplace activities for about 10 million employers and 125 million workers.

Following is a brief description of many of DOL's principal statutes most commonly applicable to businesses, job seekers, workers, retirees, contractors and grantees. This brief summary is intended to acquaint you with the major labor laws and not to offer a detailed exposition. For authoritative information on these laws, you should consult the statutes and regulations themselves; however you will find references to fuller descriptions than that contained under [Advisories](#) at the end of this fact sheet and at [DOL's compliance assistance Web site](#).

Wages & Hours

The Fair Labor Standards Act (FLSA) prescribes standards for wages and overtime pay, which affect most private and public employment. The act is administered by the [Wage and Hour Division](#) of the [Employment Standards Administration \(ESA\)](#). It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. For nonagricultural operations, it restricts the hours that children under age 16 can work and forbids the employment of children under age 18 in certain jobs deemed too dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours and in certain jobs deemed too dangerous.

The Wage and Hour Division also enforces the labor standards provisions of the Immigration and Nationality Act that apply to aliens authorized to work in the U.S. under certain nonimmigrant visa programs (H-1B, H-1B1, H-1C, H2A).

Labor Law Links

- [Wages & Hours](#)
- [Workplace Safety & Health](#)
- [Workers' Compensation](#)
- [Employee Benefits](#)
- [Unions & Their Members](#)
- [Employee Protection](#)
- [Uniformed Services](#)
- [Employment and Reemployment Rights Act](#)
- [Employee Polygraph Protection Act](#)
- [Garnishment of Wages](#)
- [The Family and Medical Leave Act](#)
- [Veterans' Preference](#)
- [Government Contracts, Grants, or Financial Aid](#)
- [Migrant & Seasonal Agricultural Workers](#)
- [Mine Safety & Health](#)
- [Construction](#)
- [Transportation](#)
- [Plant Closings & Layoffs](#)
- [Advisories](#)

Workplace Safety & Health

The Occupational Safety and Health (OSH) Act is administered by the [Occupational Safety and Health Administration \(OSHA\)](#). Safety and health conditions in most private industries are regulated by OSHA or OSHA-approved state programs, which also cover public sector employers. Employers covered by the OSH Act must comply with the regulations and the safety and health standards promulgated by OSHA. Employers also have a general duty under the OSH Act to provide their employees with work and a workplace free from recognized, serious hazards. OSHA enforces the Act through workplace inspections and investigations. Compliance assistance and other cooperative programs are also available.

Workers' Compensation

The Longshore and Harbor Workers' Compensation Act (LHWCA), administered by ESA's [Office of Workers Compensation Programs \(OWCP\)](#), provides for compensation and medical care to certain maritime employees (including a longshore worker or other person in longshore operations, and any harbor worker, including a ship repairer, shipbuilder, and shipbreaker) and to qualified dependent survivors of such employees who are disabled or die due to injuries that occur on the navigable waters of the United States, or in adjoining areas customarily used in loading, unloading, repairing or building a vessel.

The Energy Employees Occupational Illness Compensation Program Act is a compensation program that provides a lump-sum payment of \$150,000 and prospective medical benefits to employees (or certain of their survivors) of the Department of Energy and its contractors and subcontractors as a result of cancer caused by exposure to radiation, or certain illnesses caused by exposure to beryllium or silica incurred in the performance of duty, as well as for payment of a lump-sum of \$50,000 and prospective medical benefits to individuals (or certain of their survivors) determined by the Department of Justice to be eligible for compensation as uranium workers under section 5 of the Radiation Exposure Compensation Act.

The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 et seq., establishes a comprehensive and exclusive workers' compensation program which pays compensation for the disability or death of a federal employee resulting from personal injury sustained while in the performance of duty. The FECA, administered by OWCP, provides benefits for wage loss compensation for total or partial disability, schedule awards for permanent loss or loss of use of specified members of the body, related medical costs, and vocational rehabilitation. The Black Lung Benefits Act provides monthly cash payments and medical benefits to coal miners totally disabled from pneumoconiosis ("black lung disease") arising

from their employment in the nation's coal mines. The statute also provides monthly benefits to a deceased miner's survivors if the miner's death was due to black lung disease.

Employee Benefit Security

The Employee Retirement Income Security Act (ERISA) regulates employers who offer pension or welfare benefit plans for their employees. Title I of ERISA is administered by the [Employee Benefits Security Administration \(EBSA\)](#) (formerly the Pension and Welfare Benefits Administration) and imposes a wide range of fiduciary, disclosure and reporting requirements on fiduciaries of pension and welfare benefit plans and on others having dealings with these plans. These provisions preempt many similar state laws. Under Title IV, certain employers and plan administrators must fund an insurance system to protect certain kinds of retirement benefits, with premiums paid to the federal government's [Pension Benefit Guaranty Corporation \(PBGC\)](#). EBSA also administers reporting requirements for continuation of health-care provisions, required under the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA) and the health care portability requirements on group plans under the Health Insurance Portability and Accountability Act (HIPAA).

Unions & Their Members

The Labor-Management Reporting and Disclosure Act of 1959 (also known as the Landrum-Griffin Act) deals with the relationship between a union and its members. It protects union funds and promotes union democracy by requiring labor organizations to file annual financial reports, by requiring union officials, employers, and labor consultants to file reports regarding certain labor relations practices, and by establishing standards for the election of union officers. The act is administered by the [Office of Labor-Management Standards \(OLMS\)](#), which is part of ESA.

Employee Protection

Most labor and public safety laws and many environmental laws mandate whistleblower protections for employees who complain about violations of the law by their employers. Remedies can include job reinstatement and payment of back wages. [OSHA](#) enforces the whistleblower protections in most laws.

Uniformed Services Employment and Reemployment Rights Act

Certain persons who serve in the armed forces have a right to reemployment with the employer they were with when they entered service. This includes those called up from the reserves or National Guard. These rights are administered by the [Veterans' Employment and Training Service \(VETS\)](#).

Employee Polygraph Protection Act

This law bars most employers from using lie detectors on employees, but permits polygraph tests only in limited circumstances. It is administered by the [Wage and Hour Division](#).

Garnishment of Wages

Garnishment of employee wages by employers is regulated under the Consumer Credit Protection Act which is administered by the [Wage and Hour Division](#).

The Family and Medical Leave Act

Administered by the [Wage and Hour Division](#), the law requires employers of 50 or more employees to give up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child or for the serious illness of the employee or a spouse, child or parent.

Veterans' Preference

Veterans and other eligible persons have special employment rights with the federal government. They are provided preference in initial hiring and protection in reductions in force. Claims of violation of these rights are investigated by the [Veterans' Employment and Training Service \(VETS\)](#).

Government Contracts, Grants, or Financial Aid

Recipients of government contracts, grants or financial aid are subject to wage, hour, benefits, and safety and health standards under:

The Davis-Bacon Act, which requires payment of prevailing wages and benefits to employees of contractors engaged in federal government construction projects;

The McNamara-O'Hara Service Contract Act, which sets wage rates and other labor standards for employees of contractors furnishing services to the federal government;

The Walsh-Healey Public Contracts Act, which requires payment of minimum wages and other labor standards by contractors providing materials and supplies to the federal government.

Administration and enforcement of these laws are by the [Wage and Hour Division](#). ESA's [Office of Federal Contract Compliance Programs \(OFCCP\)](#) administers and enforces three federal contract-based civil rights laws that require most federal contractors and subcontractors, as well as federally assisted construction contractors, to provide equal employment opportunity. The [Office of the Assistant Secretary for Administration and](#)

[Management's \(OASAM\) Civil Rights Center](#) administers and enforces several federal assistance based civil rights laws requiring recipients of federal financial assistance from Department of Labor to provide equal opportunity.

Migrant & Seasonal Agricultural Workers

The Migrant and Seasonal Agricultural Worker Protection Act regulates the hiring and employment activities of agricultural employers, farm labor contractors, and associations using migrant and seasonal agricultural workers. The Act prescribes wage protections, housing and transportation safety standards, farm labor contractor registration requirements, and disclosure requirements. The [Wage and Hour Division](#) administers this law.

The Fair Labor Standards Act exempts agricultural workers from overtime premium pay, but requires the payment of the minimum wage to workers employed on larger farms (farms employing more than approximately seven full-time workers. The Act has special child-labor regulations that apply to agricultural employment; children under 16 are forbidden to work during school hours and in certain jobs deemed too dangerous. Children employed on their families' farms are exempt from these regulations. The [Wage and Hour Division](#) administers this law. OSHA also has special safety and health standards that may apply to agricultural operations.

The Immigration and Nationality Act requires employers who want to use foreign temporary workers on H-2A visas to get a labor certificate from the [Employment and Training Administration](#) certifying that there are not sufficient, able, willing and qualified U.S. workers available to do the work. The labor standards protections of the H-2A program are enforced by ESA's [Wage and Hour Division](#).

Mine Safety & Health The Federal Mine Safety and Health Act of 1977 covers all people who work on mine property. [The Mine Safety and Health Administration \(MSHA\)](#) administers this Act. The Mine Act holds mine operators responsible for the safety and health of miners; provides for the setting of mandatory safety and health standards, mandates miners' training requirements; prescribes penalties for violations; and enables inspectors to close dangerous mines. The safety and health standards address numerous hazards including roof falls, flammable and explosive gases, fire, electricity, equipment rollovers and maintenance, airborne contaminants, noise, and respirable dust. MSHA enforces safety and health requirements at more than 13,000 mines, investigates mine accidents, and offers mine operators training, technical and compliance assistance.

Construction

Several agencies administer programs related solely to the construction industry. OSHA has special occupational safety and health standards for construction; ESA's [Wage and Hour Division](#), under Davis-Bacon and related acts, requires payment of prevailing wages and benefits; ESA's [Office of Federal Contract Compliance Programs](#) enforces Executive Order 11246, which requires federal construction contractors and subcontractors, as well

as federally assisted construction contractors, to provide equal employment opportunity; the anti-kickback section of the Copeland Act precludes a federal contractor from inducing any employee to sacrifice any part of the compensation required.

Transportation

Most laws with labor provisions regulating the transportation industry are administered by agencies outside the Department of Labor. However, longshoring and maritime industry safety and health standards are issued and enforced by [OSHA](#). The Longshoring and Harbor Workers' Compensation Act, administered by [ESA](#), requires employers to assure that workers' compensation is funded and available to eligible employees.

In addition, the rights of employees in the mass transit industry are protected when federal funds are used to acquire, improve, or operate a transit system. Under the Federal Transit law, the Department of Labor is responsible for approving employee protection arrangements before the department of Transportation can release funds to grantees.

Plant Closings & Layoffs

Such occurrences may be subject to the Worker Adjustment and Retraining Notification Act (WARN). WARN offers employees early warning of impending layoffs or plant closings. The [Employment and Training Administration \(ETA\)](#) provides information to the public on WARN, though neither ETA nor the Department of Labor has administrative responsibility for the statute, which is enforced through private action in the federal courts.

Advisories

For more details and guidance on laws and regulations covered in this fact sheet, call the appropriate Department of Labor agency listed in your phone book under U.S. Government.

Other federal agencies besides the Department of Labor enforce laws and regulations that affect employers. Statutes that ensure non-discrimination in employment are generally enforced by the [Equal Employment Opportunity Commission \(EEOC\)](#). The Taft-Hartley Act regulates a wide range of employer-employee conduct and is administered by the [National Labor Relations Board \(NLRB\)](#). For more information on these laws, consult these agencies; they are listed in your phone book under U.S. Government.

Human Resources Management

Human resources is a term used to describe the individuals who comprise the workforce of an organization, although it is also applied in labor economics to, for example, business sectors or even whole nations. Human resources is also the name of the function within an organization charged with the overall responsibility for implementing strategies and policies relating to the management of individuals (i.e. the human resources). This function title is often abbreviated to the initials '[HR](#)'.

Human resources is a relatively modern management term, coined in the 1960s. The origins of the function arose in organizations that introduced 'welfare management' practices and also in those that adopted the principles of 'scientific management'. From these terms emerged a largely administrative management activity, co-ordinating a range of worker related processes and becoming known, in time as the 'personnel function'. Human resources progressively became the more usual name for this function, in the first instance in the United States as well as multinational corporations, reflecting the adoption of a more quantitative as well as strategic approach to workforce management, demanded by corporate management and the greater competitiveness for limited and highly skilled workers.

Background

The use of the term 'human resources' by organizations to describe the workforce capacity available to devote to the achievement of its strategies has drawn upon concepts developed in Industrial/Organizational Psychology and [System Theory](#). Human resources has at least two related interpretations depending on context. The original usage derives from [political economy](#) and [economics](#), where it was traditionally called [labor](#), one of four [factors of production](#) – although this perspective has shifted as a consequence of further ongoing research into more strategic approaches.^[1] This first usage is used more in terms of 'human resources development' of the individuals within an organization, although the approach can also be applied beyond the level of the organization to that of industry sectors and nations.^[2]

History

The early development of the function can be traced back to at least two distinct movements. One element has its origins in the late 19th century, where organizations such as [Cadburys](#) at its [Bournville](#) factory recognised the importance of looking after the welfare of the workforce, and their families. The employment of women in factories in the [United Kingdom](#) during the [First World War](#) lead to the introduction of "Welfare Officers".

Meanwhile, in the [United States](#) the concept of human resources developed as a reaction to the efficiency focus of [Taylorism](#) or "scientific management" in the early 1900s, which developed in response to the demand for ever more efficient working practices within highly mechanised factories, such as in the [Ford Motor Company](#). By 1920, psychologists and employment experts in the United States started the [human relations](#) movement, which viewed workers in terms of their [psychology](#) and fit with companies, rather than as interchangeable parts.

During the middle of the last century, larger corporations, typically those in the United States that emerged after the [Second World War](#), recruited personnel from the US Military and were able to apply new selection, training, leadership, and management development techniques, originally developed by the Armed Services, working with, for example, university-based occupational psychologists. Similarly, some leading European multinationals, such as [Shell](#) and [Phillips](#) developed new approaches to personnel development and drew on similar approaches already used in [Civil Service](#) training. Gradually, this spread more sophisticated policies and processes that required more central management via a personnel department composed of specialists and generalist teams.

The role of what became known as Human Resources grew throughout the middle of the 20th century. Tensions remained between academics who emphasized either 'soft' or 'hard' HR. Those professing so-called 'soft HR' stressed areas like [leadership](#), cohesion, and loyalty that play important roles in organizational success. Those promoting 'hard HR' championed more quantitatively rigorous management techniques in the 1960s.

In the later part of the last century, both the title and traditional role of the personnel function was progressively superseded by the emergence, at least in larger organizations, of strategic human resources management and sophisticated human resources departments. Initially, this may have involved little more than renaming the function, but where transformation occurred, it became distinguished by the human resources having a more significant influence on the organizations strategic direction and gaining board-level representation.

Human resources purpose and role

In simple terms, an organization's human resource management strategy should maximize return on investment in the organization's human capital and minimize financial risk. Human Resources seeks to achieve this by aligning the supply of skilled and qualified individuals and the capabilities of the current workforce, with the organization's ongoing and future business plans and requirements to maximize return on investment and secure future survival and success. In ensuring such objectives are achieved, the human resource function purpose in this context is to implement the organization's human resource requirements effectively but also pragmatically, taking account of legal, ethical and as far as is practical in a manner that retains the support and respect of the workforce.

Key functions

Human Resources may set strategies and develop policies, standards, systems, and processes that implement these strategies in a whole range of areas. The following are typical of a wide range of organizations:

- Recruitment, selection, and onboarding (resourcing)
- Organizational design and development
- Business transformation and change management
- Performance, conduct and behavior management
- Industrial and employee relations
- Human resources (workforce) analysis and workforce personnel data management
- Compensation, rewards, and benefits management
- Training and development (learning management)

Implementation of such policies, processes or standards may be directly managed by the HR function itself, or the function may indirectly supervise the implementation of such activities by managers, other business functions or via third-party external partner organizations.

In organizations, it is important to determine both current and future organizational requirements for both core employees and the contingent workforce in terms of their skills/technical abilities, competencies, flexibility etc. The analysis requires consideration of the internal and external factors that can have an effect on the [resourcing](#), development, motivation and retention of employees and other workers.

External factors are those largely out-with the control of the organization. These include issues such as economic climate and current and future labor market trends (e.g., skills, education level, government investment into industries etc.). On the other hand, internal influences are broadly controlled by the organization to predict, determine, and monitor—for example—the [organizational culture](#), underpinned by management style, environmental climate, and the approach to ethical and [corporate social responsibilities](#).

Major trends

To know the business environment an organization operates in, three major trends must be considered:

1. [Demographics](#): the characteristics of a population/workforce, for example, age, gender or social class. This type of trend may have an effect in relation to pension offerings, insurance packages etc.
2. [Diversity](#): the variation within the population/workplace. Changes in society now mean that a larger proportion of organizations are made up of "[baby-boomers](#)" or older employees in comparison to thirty years ago. Advocates of "workplace diversity" simply advocate an employee base that is a mirror reflection of the make-up of society insofar as race, gender, sexual orientation, etc.
3. [Skills and qualifications](#): as industries move from manual to more managerial professions so does the need for more highly skilled graduates. If the market is "tight" (i.e., not enough staff for the jobs), employers must compete for employees by offering financial rewards, community investment, etc..

Individual responses

In regard to how individuals respond to the changes in a labour market, the following must be understood:

- Geographical spread: how far is the job from the individual? The distance to travel to work should be in line with the pay offered, and the transportation and infrastructure of the area also influence who applies for a post.
- Occupational structure: the norms and values of the different careers within an organization. Mahoney 1989 developed 3 different types of occupational structure namely craft (loyalty to the profession), organization career (promotion through the firm) and unstructured (lower/unskilled workers who work when needed).
- Generational difference: different age categories of employees have certain characteristics, for example their behaviour and their expectations of the organization.

Framework

Human Resources Development is a framework for the expansion of human capital within an organization or (in new approaches) a municipality, region, or nation. Human Resources Development is a combination of training and education, in a broad context of adequate health and employment policies, that ensures the continual improvement and growth of both the individual, the organization, and the national human resourcefulness. Adam Smith states, "The capacities of individuals depended on their access to education".^[3] Human Resources Development is the medium that drives the process between training and learning in a broadly fostering environment. Human Resources Development is not a defined object, but a series of organised processes, "with a specific learning objective" (Nadler,1984)^[4] Within a national context, it becomes a strategic approach to intersectoral linkages between health, education and employment.^[5]

Structure

Human Resources Development is the structure that allows for individual development, potentially satisfying the organization's, or the nation's goals. Development of the individual benefits the individual, the organization—and the nation and its citizens. In the corporate vision, the Human Resources Development framework views employees as an asset to the enterprise, whose value is enhanced by development, "Its primary focus is on growth and employee development...it emphasises developing individual potential and skills" (Elwood, Olton and Trott 1996)^[6] Human Resources Development in this treatment can be in-room group training, tertiary or vocational courses or mentoring and coaching by senior employees with the aim for a desired outcome that develops the individual's performance. At the level of a national strategy, it can be a broad intersectoral approach to fostering creative contributions to national productivity.^[7]

Training

At the organizational level, a successful Human Resources Development program prepares the individual to undertake a higher level of work, "organized learning over a given period of time, to provide the possibility of performance change" (Nadler 1984). In these settings, Human Resources Development is the framework that focuses on the organizations competencies at the first stage, training, and then developing the employee, through education, to satisfy the organizations long-term needs and the individuals' career goals and employee value to their present and future employers. Human Resources Development can be defined simply as developing the most important section of any business, its human resource, by attaining or upgrading employee skills and attitudes at all levels to maximise enterprise effectiveness.^[3] The people within an organization are its human resource. Human Resources Development from a business perspective is not entirely focused on the individual's growth and development, "development occurs to enhance the organization's value, not solely for individual improvement. Individual education and development is a tool and a means to an end, not the end goal itself" (Elwood F. Holton II, James W. Trott Jr).^[6] The broader concept of national and more strategic attention to the development of human resources is beginning to emerge as newly independent countries face strong competition for their skilled professionals and the accompanying brain-drain they experience.

Recruitment

Employee recruitment forms a major part of an organization's overall resourcing strategies, which identify and secure people needed for the organization to survive and succeed in the short to medium-term. Recruitment activities need to be responsive to the ever-increasingly competitive market to secure suitably qualified and capable recruits at all levels. To be effective these initiatives need to include how and when to source the best recruits internally or externally. Common to the success of either are; well-defined organizational structures with sound job design, robust task and person specification and versatile selection processes, reward, [employment relations](#) and [human resource policies](#), underpinned by a commitment for strong [employer branding](#) and [employee engagement](#) and [onboarding](#) strategies.

Internal recruitment can provide the most cost-effective source for recruits if the potential of the existing pool of employees has been enhanced through training, development and other performance-enhancing activities such as [performance appraisal](#), [succession planning](#) and [development centres](#) to review performance and assess employee development needs and promotional potential.

Increasingly, securing the best quality candidates for almost all organizations relies, at least occasionally if not substantially, on external recruitment methods. Rapidly changing business models demand skill and experience that cannot be sourced or rapidly enough developed from the existing employee base. It would be unusual for an organization to undertake all aspects of the recruitment process without support from third-party dedicated recruitment firms. This may involve a range of support services, such as; provision of [CVs or resumes](#), identifying recruitment media, advertisement design and media placement for job vacancies, candidate response handling, [shortlisting](#), conducting [aptitude testing](#), preliminary [interviews](#) or reference and [qualification](#) verification. Typically, small organizations may not have in-house resources or, in common with larger organizations, may not possess the particular skill-set required to undertake a specific recruitment assignment. Where requirements arise, these are referred on an ad hoc basis to government [job centres](#) or commercially run [employment agencies](#).

Except in sectors where high-volume recruitment is the norm, an organization faced with sudden, unexpected requirements for an unusually large number of new recruits often delegates the task to a specialist external recruiter. Sourcing [executive-level](#) and [senior management](#) as well as the acquisition of scarce or 'high-potential' recruits has been a long-established market serviced by a wide range of 'search and selection' or '[headhunting](#)' consultancies, which typically form long-standing relationships with their client organizations. Finally, certain organizations with sophisticated HR practices have identified there is a strategic advantage in [outsourcing complete responsibility for all workforce procurement](#) to one or more third-party recruitment agencies or consultancies. In the most sophisticated of these arrangements the external recruitment services provider may not only physically locate, or 'embed', their resourcing team(s) in the client organization's offices, but work in tandem with the senior human resource management team in developing the longer-term HR resourcing strategy and plan.

Other considerations

Despite its more everyday use terms such as "human resources" and similarly "human capital" continue to be perceived negatively and maybe considered an insulting of people. They create the impression that people are merely commodities, like office machines or vehicles, despite assurances to the contrary

Modern analysis emphasizes that human beings are not "[commodities](#)" or "resources", but are creative and social beings in a productive enterprise. The 2000 revision of [ISO 9001](#) in contrast requires identifying the processes, their sequence and interaction, and to define and communicate responsibilities and authorities. In general, heavily unionised nations such as [France](#) and [Germany](#) have adopted and encouraged such approaches. The International Labour Organization also in 2001 decided to revisit, and revise its 1975 Recommendation 150 on Human Resources Development.^[8]

Trans-national labor mobility

An important controversy regarding labor mobility illustrates the broader philosophical issue with usage of the phrase "human resources": governments of developing nations often regard developed nations that encourage immigration or "guest workers" as appropriating human capital that is more rightfully part of the developing nation and required to further its economic growth.

Over time, the [United Nations](#) have come to more generally support the developing nations' point of view, and have requested significant offsetting "foreign aid" contributions so that a developing nation losing human capital does not lose the capacity to continue to train new people in trades, professions, and the arts.^[9]

Ethical management

In the very narrow context of corporate "human resources" management, there is a contrasting pull to reflect and require [workplace diversity](#) that echoes the diversity of a global customer base. Such programs require foreign language and culture skills, ingenuity, humour, and careful listening. These indicate a general shift through the human capital point of view to an acknowledgment that human beings contribute more to a productive enterprise than just "work": they bring their character, ethics, creativity, social connections, and in some cases pets and children, and alter the character of a workplace. The term [corporate culture](#) is used to characterize such processes at the organizational level.

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Ethics and Philosophy

Ethics and Philosophy Terminology ^{xiv}

A. Ethics, morals and values are difficult to define and many definitions are acceptable

1. Ethics is generally thought of as the study of right action and morals is the system through which that action is applied

B. Ethics

1. The critical examination and evaluation of what is good, evil, right and wrong in human conduct (Guy, 2001)

2. A specific set of principles, values and guidelines for a particular group or organization (Guy, 2001)

3. Ethics is the study of goodness, right action and moral responsibility, it asks what choices and ends we ought to pursue and what moral principles should govern our pursuits and choices (Madden, 2000)

C. Morals

1. Those principles and values that actually guide, for better or worse, an individual's personal conduct (Guy, 2001)

2. Morality is the informal system of rational beings by which they govern their behavior in order to lesson harm or evil and do good, this system, although informal, enjoys amazing agreement across time and cultures concerning moral rules, moral ideas and moral virtues (Madden, 2000)

D. Values

1. Where emphasis is placed and what is rewarded in an organization and society

2. Guiding principles of behavior and conduct.

3. The core motivator for behaviors

IV. Ethical theories

A. In-depth knowledge is not required but it is important to have an understanding of some of the major theories to help shape classroom discussions

B. Divine Law

1. Based in many religions, primarily Judeo-Christian and Islamic

2. What is considered good under this philosophy? God's will and word

3. What is right behavior? Obeying God's will

4. What are the strengths of this theory? Moral certainty and guidance

5. What are some of the weaknesses of this theory? Moral certainty, self righteousness and intolerance

C. Virtue Ethics

1. Based in ancient Greek philosophy: Plato and Aristotle
2. What is considered good under this philosophy? Seeking happiness and living the good life
3. What is right behavior? Acting virtuously which is necessary for happiness
4. What are the strengths of this theory? Virtue is it's own reward and leads to self-actualization
5. What are some of the weaknesses of this theory? Consequences, the common good and principle are ignored

D. Egoism

1. Based in classical and contemporary philosophy
2. What is considered good? What I think is best for me is good
3. What is right behavior? Promoting what is good for me only
4. What are the strengths of this theory? Leads to moral certainty and moral autonomy
5. What are some of the weaknesses of this theory? Self-centeredness, moral certainty, selfishness and unrealistic thinking

E. Ethical Relativism

1. Based in classical and contemporary philosophy
2. What is considered good? Only whatever the individual/group/culture decides is right is right
3. What is right behavior? Acting in accord with the group's values and principles
4. What are the strengths of this theory? Tolerance of others, flexible thinking and practicality
5. What are some of the weaknesses of this theory? It rules out criticism of obvious evil and all is considered relative

F. Utilitarianism

1. Based in British/American philosophy: Bentham and Kant
2. What is considered good? Happiness/pleasure, diminishing misery and pain
3. What is right behavior? Promoting the greatest good for the greatest number
4. What are the strengths of this theory? Practical, considers consequences of actions
5. What are some of the weaknesses of this theory? A good end may justify a bad means, it is often a vague theory, and justifies mistreatment of a minority group of people as the means to an end if they do not agree with the majority, it can be dehumanizing

G. Duty Ethics

1. Based on theories by Kant
2. What is considered good? Good will that is good-hearted and extended to others
3. What is right behavior? Doing your moral duty and acting as a model for others to follow
4. What are the strengths of this theory? Highly principled behavior, consistent and certain, showing respect for self and others
5. What are some of the weaknesses of this theory? It ignores circumstances and principles and offers no way to choose among competing principles

[www.nhtsa.dot.gov/people/injury/ems/Instructor/Module 5 - Ethics.pdf](http://www.nhtsa.dot.gov/people/injury/ems/Instructor/Module%205%20-%20Ethics.pdf)

Business- Ethics and New Professionals

By Lizabeth England ^{xv}

Employees and future employees should know about business ethics in order to perform ethically on the job. Standards of ethical conduct are a part of good business education and training in all geographical and business settings. In this chapter, we will explore some of the mechanisms used to teach business ethics in the United States.

These are some of the questions for business education that we will address in this chapter.

- What can academic institutions do to educate students about ethics?
- What do companies do to educate employees about ethics?
- How do employees learn to do a better job and to do it ethically?
- How do governments support training for ethical business practices?
- Where do employees get information when they face a conflict between keeping a competitive edge and maintaining ethical standards?

Background Information

Success comes when companies create an innovative and supportive environment for new ideas. Chrysler's CEO, Robert Eaton, has said, "The only way we can beat the competition is with people." We would add, "And the best way to compete is to train employees with ethics."

If a company's goal is to become involved and succeed in the global marketplace, it will hire new employees who are well educated in all aspects of business, especially in business ethics. At the same time, employees who are in the workforce already must continue to learn through professional development opportunities. Ethics is a valuable topic for professional development among business professionals. With a workforce trained and committed to ethics, managers can be assured that ethical behavior and ethical practices will prevail in the workplace. Without training, business employees may engage in unethical business practices – without even knowing it. This chapter is designed to assist in this important training.

The following presents some background information on ways in which business ethics is taught and learned in two contexts: in formal educational settings, like universities and colleges, and in company-sponsored, on-the-job training programs at work.

How Business Professionals Learn about Ethics

Business schools teach students about ethics using a variety of tools and activities. On the job, employees are required to enroll in ethics-related workshops and training provided by the company.

Business Education and Ethics in Universities and Colleges

In order to build ethical principles, business school faculty offers students a variety of opportunities to develop their knowledge and skills in business ethics.

Here is a list of four common instructional tools for teaching business ethics in universities and colleges:

1. Case studies that require ethical judgment and knowledge about ethics in real-life company-based cases.
2. Assignments that require students to learn about the ethical codes of conduct in several companies. Students talk, read and write about the issues that these codes raise inside the company and in business.
3. Tasks outside the classroom that require students to learn more about how businesses function ethically. Students are asked to visit and tour a company, interview a manager or other employees in a company, research the company's history and ethical performance using a variety of resources: company policy documents, company archives, newspaper reports and magazine articles on the company, or the World Wide Web

4. Readings from a variety of business and professional sources (professional journals, popular magazines and newspapers, and company literature – electronic and paper) followed by discussions on the issues and values that these readings present. Familiarity with business ethics journals (both paper and on line) is an important part of business ethics education. Students are given assignments to find information and report back to the class.

On the Job Training and Ethics

Employers are required by law and by the company's own ethical code to provide employees with opportunities for on-the-job training in specific job-related ethical concerns. Some of these training opportunities are considered to be a part of employee professional development. A few examples of on-the-job ethical training:

1. Required workshops for all employees on sexual harassment awareness training – Employees attend workshops and participate in discussions on a variety of topics that influence workplace behavior and can help employees avoid being perpetrators or victims of sexual harassment
2. Training programs on ethical use of the World Wide Web – In these training workshops, employees learn that the World Wide Web is a new tool that can have many uses, some ethical, some unethical. With the advent of the World Wide Web, massive quantities of information are available and can be used for ethical and unethical purposes. Employees are trained in ethical web use.
3. Employee discussion groups on ethical issues – Human Resources or Personnel Department organizes informal employee discussions on topics of relevance and concern to management. In these informal settings, employees learn how to address ethical issues in accordance with the company's Code of Conduct. Morale issues and other matters are aired in these informal settings.
4. Personnel services – Employee education and training on topics such as ethical concerns related to health, environment, or corporate philanthropy decisions) and employee counseling

In the United States, businesses are often judged by their socially responsible behaviors. Most people agree that these include the following specific elements: equal employment opportunity for all citizens regardless of their race, religion or sex; respect for employees' diversity, safety, and health in the workplace; and assurance and full disclosure on the quality of products and services. If any one of these elements is ignored or abused, a business is likely to be subjected to a penalty and sometimes, legal action.

When an employee discovers unethical, immoral or illegal actions at work, the employee makes a decision about what to do with this information. Whistleblowing is the term used to define an employee's decision to disclose this information to an authority figure (boss, media or government official).

Are you a good decision maker?

Decisions, decisions, decisions. It seems like every time we turn around, we have to make more decisions. The question is, "Are you a good decision maker?" If you aren't (or don't think you are), there is no need to worry. Decision-making is a skill that can be learned by anyone. Although some people may find this particular skill easier than others, everyone applies a similar process.

There are two basic kinds of decisions: those that are arrived at using a specific process and those that just happen. Although both kinds of decisions contain opportunities and learning experiences, there are definite advantages to using a specific process to make a decision. The most obvious advantage is the reduced level of stress you will experience.

Wise decisions are made using a definite process. They are based on the values and perceptions of the decision-maker and include carefully-considered alternatives and options along with periodic reassessments of the decision and its effects. Wise decisions may or may not follow societal norms and expectations, but they are right for the decider based on what he/she knows at that point in time about his/her options as well as him/herself.

Ten Steps to Wise Decision-Making

This process can be applied to any situation where you need to make an important decision. If you follow these ten basic steps, you will find yourself making wiser decisions in your professional as well as your personal life.

- Define, as specifically as possible, what the decision is that needs to be made. Is this really your decision or someone else's? Do you really need to make a decision? (If you do not have at least two options, there is no decision to be made.) When does the decision need to be made? Why is this decision important to you? Who will be affected by this decision? What values does this decision involve for you?
- Write down as many alternatives as you can think of. Brainstorm as many different alternatives as you can imagine. Let your imagination run free and try not to censure anything; this is not the time to be judgmental. Just be sure to write everything down.
- Think where you could find more information about possible alternatives. If you only come up with a few alternatives, you may want to get more information. Additional information generally leads to more alternatives. Places where you can look for the information you need include friends, family, clergy, co-workers, state and federal agencies, professional organizations, online services, newspapers, magazines, books, and so on.
- Check out your alternatives. Once you have a list of alternatives, use the same sources of information to find out more about the specifics of each option. You will find that the more information you gather, the more ideas will pop into your head. Be sure to write these down and check them out too.

- Sort through all of your alternatives. Now that you have your list of alternatives, it is time to begin evaluating them to see which one works for you. First, write down the values that would come into play for each alternative. Second, look for the alternatives which would allow you to use the greatest number of your values. Third, cross the alternatives off the list which do not fit into your personal value framework.
- Visualize the outcomes of each alternative. For each remaining alternative on your list, picture what the outcome of that alternative will look like. Here, too, it helps if you write out your impressions.
- Do a reality check. Which of your remaining alternatives are most likely to happen? Cross off those alternatives that most likely will not happen to you.
- Which alternative fits you? Review your remaining alternatives and decide which ones feel most comfortable to you. These are your wise decisions. If you are very happy about a decision, but are not as comfortable with its possible outcome, this is a clue that this is not a wise decision for you. On the other hand, you may dislike an alternative, but be very excited about the possible outcome. This decision would probably not be wise for you either. If you feel you can live with both the alternative as well as the possible outcome, this is the wise decision you should follow.
- Get started! Once you have made your decision, get moving on it. Worrying or second-guessing yourself will only cause grief. You have done your very best for the present; you always have the option of changing your mind in the future. Remember, no decision is set in stone.
- How is it going? Be sure to review your decision at specified points along the road. Are the outcomes what you expected? Are you happy with the outcomes? Do you want to let the decision stand or would you like to make some adjustments? If the decision did not come out the way you planned, go through the complete decision-making process again. In the process, answer the following questions: Did I not have enough information? What values actually came into play? Were they my values or someone else's? Remember, you can always change your mind!

Common Decision-Making Mistakes

As much as we would like to believe that we do not have any prejudices or biases, the fact is that everyone does. The more aware you are of yours, the better off you will be. The main reason everyone has their own way of viewing the world is because our brains simply cannot take in everything, at least not on a conscious level.

Have you ever tried to learn ten new things all at once? If you have, you know that it is very easy to become overwhelmed and end up learning very little at all. That is because of the way the brain works. Our brains screen and categorize information so that we can understand the world around us without being overwhelmed by it. We get into trouble when we fail to realize that many of the perceptions we hold are based on what society (i.e., parents, teachers, the church, all institutions, etc.) teach us, not what we actually know to be true.

Below is a list of the most common decision-making mistakes. By learning about these pitfalls now, you will be able to avoid them in the future.

- Relying too much on expert information. Oftentimes, people have a tendency to place too much emphasis on what experts say. Remember, experts are only human and have their own set of biases and prejudices just like the rest of us. By seeking information from a lot of different sources, you will get much better information than if you focused all of your energy on only one source.
- Overestimating the value of information received from others. People have a tendency to overestimate the value of certain individuals in our society and underestimate the value of others. For instance, experts, authority figures, parents, high status groups, people who seem to have it all together, and people we respect have a way of swaying our opinion based simply on the fact that we believe they know more than we do. When you find yourself doing this, ask yourself: Do they know as much about this problem as I do? Are their values the same as mine? Have they had any personal experiences with a problem like mine? In other words, keep their opinions in perspective.
- Underestimating the value of information received from others. Whether we realize it or not, we also have a tendency to discount information we receive from individuals such as children, low status groups, women (yes, believe it!), the elderly, homemakers, blue-collar workers, artists, etc. This is unfortunate since many times these groups can paint a good picture of the other side of your problem. In other words, these groups may use entirely different values and perceptions in their answers to your questions. The result is a larger perspective of what the issues really are. Just make a note that if you find yourself discounting the information you receive from anyone, make sure you ask yourself why.
- Only hearing what you want to hear or seeing what you want to see. Try this exercise. Ask a friend to look around them and make note of everything that is green. Now, have them close their eyes. Once their eyes are closed, ask them to tell you what around them is red. Almost everyone you ask will not be able to tell you what was red because they were focusing on what was green. Our perceptions work the same way. If we have expectations or biases that we are not aware of, we tend to see what we want to see. Likewise, if someone tries to tell us something we do not want to hear, we simply do not hear them. This is a common mistake that many people make. The key is to be aware of your own prejudices and expectations while at the same time staying open to everything that comes your way.
- Not listening to your feelings or gut reactions. Have you ever made a decision only to have it be followed by a major stomach ache or headache? This is your body talking to you. Our brains are constantly taking in more information than we can consciously process. All of this extra information gets buried in our subconscious. Although we may not be able to retrieve this information, our body stores it for us until it is needed. In moments when we need to make a decision, our bodies provide clues to the answer through feelings or gut reactions. Unfortunately, our society teaches us to ignore these feelings, but by tuning into your intuition, you will find that you will make much better decisions in the long run.

Time Management

Making Time

You planned on getting to work early to finish the project that's due today, but now the car won't start. You know you wrote the mechanic's name down somewhere, but now you can't remember where you put it. You frantically search through your notes, but you can't find it anywhere. There's no way you're going to have time to finish your project. You start to panic.

The clock just keeps ticking.

Most of us have felt swamped at one time or another. With hectic work schedules, family responsibilities, and social engagements, there just doesn't seem to be enough time for everything we need and want to do. However, there is light at the end of the tunnel. Although life will always provide us with its little twists and turns, once we learn to manage our time wisely, much of the day-to-day chaos in our lives can be reduced or even eliminated.

The first step in learning how to manage your time is to develop a general work schedule. Your work schedule should include time for yourself as well as time for the maintenance of your business.

After you've defined the major elements of your workload, the next step is to prioritize them by identifying critical deadlines, routine maintenance items, and fun/relaxation time. Answering questions like "How much time do I have to make this decision, finish this task, or contact this person?" will help you to start identifying what needs to be done immediately versus what can wait. Setting priorities depends on deadlines, how many people you must call to get the information you need, and whether you can delegate or get assistance from others. If you are involved in group projects, reserve additional time for communication and problem-solving.

Once you have identified your priorities, look at all of your options for achieving them. Evaluate and move forward with the ones you feel are the most useful for you. The only time to consider changing approaches mid-task is when you know the change will save time. If you are in doubt, it is usually best to consider in the direction you started.

By setting up your work schedule and identifying your priorities, you have already started down the road to more effective time management. Other time management suggestions you may find useful for managing both your business life as well as your personal life include the following:

- Contract out tasks. Contract out tasks you do not have the expertise to complete. Your client will appreciate your honesty and effort to get the best result.
- Start with the most worrisome task. Start the morning, afternoon, or evening with the most worrisome task before you. This will reduce your anxiety level for the next task.

- Complete deadline work early. Not only will this reduce stress and lighten your work schedule, but it will also give you more self-confidence about managing your schedule.
- Know your capacity for stress. When you are hitting overload, take the break you need (even if it is a short one) when you need it.
- Stay organized. Take time at the end of each day to briefly organize your desk and make reminder lists of tasks for the next day or week.
- Take advantage of down time. Allow yourself some down time between busy periods to review your schedule and reevaluate your priorities.
- Get physical. Physical exertion such as walking, bicycling, swimming, or organized sports activities helps to discharge stress. Stretching, yoga, jumping rope, sit-ups, playing with children, or doing yard work are other types of therapeutic breaks you should consider during times of stress.
- Have fun. Be sure to have some fun while working or playing; a good sense of humor can keep most problems in perspective.
- Divide up your time. Decide how much time to spend on business development, personal needs, volunteerism, and family. Start by allowing 25 percent of your time for yourself. Each time you make a commitment, set a timeline for your involvement. Remember that maintenance takes at least 25 percent of the time you spend on any project whether it's business, marriage, or serving on the board of a non-profit organization.
- Build flexibility into your schedule. Your availability to family and friends depends on the flexibility you build into your schedule. Female business owners frequently have the primary responsibility for making sure family members are cared for when they are dependent or ill, so it's necessary to leave some time in your schedule for emergencies or to have good backup resources. Get to know your neighbors so you know who to call on for help in times of crisis. In the bigger picture, consider the relationship between your business life and your personal life. Be as realistic as possible when answering the following questions, keeping in mind what is most important to you:
 - What are your long term goals? Your partner's goals?
 - Where are the conflicts, and where are the similarities?
 - What is it that you really want to do? List all possible ways to accomplish this.
 - How long will it take you to reach your goal?
 - How do your timeline and goals affect your family (parents, siblings, partner, children)?
 - How do your personal goals conflict with or match your business goals?
 - How much time can you donate to community programs?
 - Have you talked about your personal goals with your business partner?
 - Have you talked about your business goals with your personal partner?

(Ohio Women's Business Network, Columbus, OH, 4/97)

Decision Making

Decision-Making FAQs

What are the major reasons for small business failure?

In his book *Small Business Management* (published by West Publishing Co.), Michael Ames gives us the following reasons for small business failure:

- Lack of experience
- Insufficient capital (money)
- Poor location
- Poor inventory management
- Over-investment in fixed assets
- Poor credit arrangement management
- Personal use of business funds
- Unexpected growth

Gustav Berle in *The Do It Yourself Business Book* (published by Wiley Co.) adds two more reasons to Michael Ames' list:

- Competition
- Low sales

Do I have what it takes to own/manage a small business?

You will be your own most important employee, so an objective appraisal of your strengths and weaknesses is essential. Some questions to ask yourself are:

- Am I a self-starter?
- How well do I get along with a variety of personalities?
- How good am I at making decisions?
- Do I have the physical and emotional stamina to run a business?
- How well do I plan and organize?
- Are my attitudes and drive strong enough to maintain motivation?
- How will the business affect my family?

[Try the Quiz for Small Business Success](#)

What business should I choose?

Usually, the best business for you is the one in which you are most skilled and interested. As you review your options, you may wish to consult local experts and businesspersons about the growth potential of various businesses in your area. Matching your background with the local market will increase your chance of success.

What is SCORE?

The SCORE Association (Service Corps of Retired Executives) is a nonprofit association dedicated to entrepreneur education and the formation, growth, and success of small businesses nationwide. SCORE is a resource partner with the Small Business Administration. SCORE Association volunteers serve as "Counselors to America's Small Business." Working and retired executives and business owners donate their time and expertise as volunteer business counselors and provide confidential counseling and mentoring free of charge.

Risk Management and Insurance

Insurance ^{xvii}

Buying business insurance is among the best ways to prepare for the unexpected. Without proper protection, misfortunes such as the death of a partner or key employee, embezzlement, a lawsuit, or a natural disaster could spell the end of a thriving operation. Ranging from indispensable worker's compensation insurance to the relatively obscure executive kidnapping coverage, insurance is available for nearly any business risk. Considering the multitude of available options, business owners must carefully weigh whether the cost of certain premiums will justify the coverage for a given risk.

General Liability

Many business owners buy general liability or umbrella liability insurance to cover legal hassles due to claims of negligence. These help protect against payments as the result of bodily injury or property damage, medical expenses, the cost of defending lawsuits, and settlement bonds or judgments required during an appeal procedure.

Product Liability

Every product is capable of personal injury or property damage. Companies that manufacture, wholesale, distribute, and retail a product may be liable for its safety. Additionally, every service rendered may be capable of personal injury or property damage. Businesses are considered liable for negligence, breach of an express or implied warranty, defective products, and defective warnings or instructions.

Home-Based Business Insurance

Contrary to popular belief, homeowners' insurance policies do not generally cover home-based business losses. Commonly needed insurance areas for home-based businesses include business property, professional liability, personal and advertising injury, loss of business data, crime and theft, and disability.

Internet Business Insurance

Web-based businesses may wish to look into specialized insurance that covers liability for damage done by hackers and viruses. In addition, e-insurance often covers specialized online activities, including lawsuits resulting from meta tag abuse, banner advertising, or electronic copyright infringement.

Worker's Compensation

Required in every state except Texas, worker's compensation insurance pays for employees' medical expenses and missed wages if injured while working. The amount of insurance employers must carry, rate of payment, and what types of employees must be carried varies depending on the state. In most cases, business owners, independent contractors, domestic employees in private homes, farm workers, and unpaid volunteers are exempt.

Criminal Insurance

No matter how tight security is in your workplace, theft and malicious damage are always possibilities. While the dangers associated with hacking, vandalism, and general theft are obvious, employee embezzlement is more common than most business owners think. Criminal insurance and employee bonds can provide protection against losses in most criminal areas.

Business Interruption Insurance

Some businesses may wish to acquire insurance that covers losses during natural disasters, fires, and other catastrophes that may cause the operation to shut down for a significant amount of time.

Key Person Insurance

In addition to a business continuation plan that outlines how the company will maintain operations if a key person dies, falls ill, or leaves, some companies may wish to buy key person insurance. This type of coverage is usually life insurance that names the corporation as a beneficiary if an essential person dies or is disabled.

Malpractice Insurance

Some licensed professionals need protection against payments as the result of bodily injury or property damage, medical expenses, the cost of defending lawsuits, investigations and settlements, and bonds or judgments required during an appeal procedure.

Insurance FAQ's

What is Workers' Compensation Insurance?

Workers' compensation insurance provides coverage for an employee who has suffered an injury or illness resulting from job-related duties. Coverage includes medical and rehabilitation costs and lost wages for employees injured on the job. This insurance can be obtained from a licensed insurance company. The law in most states requires some form of workers' compensation insurance. Refer to the workers' compensation authority in [your particular state](#).

What is a surety bond?

A surety bond provides a form of guarantee that you will complete the work that you have committed to perform. Often referred to as a performance bond, the surety bond guarantees that you have the financial resources to complete the job from start to finish. Through its [Surety Bond Program](#) the SBA can guarantee bid, performance, and payment bonds for contracts up to \$2 million for small businesses that cannot obtain bonds through regular commercial channels.

Will my homeowners' insurance cover my home-based business?

More than likely your homeowners' insurance will not cover your home-based business. In fact, operating a business out of your home may negatively impact some of your other homeowners' coverage. If you check your homeowners' policy, you may find that your small business is either underinsured or even uninsured. In most cases you will find that the coverage of business equipment such as computers, fax machines, copiers, and printers is limited to less than the cost of a new computer alone. Also, your homeowners' liability insurance coverage probably won't cover any injuries that may occur to the employees or clients that you have on your premises. Check with your insurance carrier to determine your exact coverage.

Competitive Analysis

Competitive Analysis ^{xviii}

Business takes place in a highly competitive, volatile environment, so it is important to understand the competition. Questions like these can help:

- Who are your five nearest direct competitors?
- Who are your indirect competitors?
- Is their business growing, steady, or declining?
- What can you learn from their operations or advertising?
- What are their strengths and weaknesses?
- How does their product or service differ from yours?

Start a file on each of your competitors; include advertising, promotional materials, and pricing strategies. Review these files periodically, determining how often they advertise, sponsor promotions, and offer sales. Study the copy used in the advertising and promotional materials and their sales strategies.

What to Address in Your Competitor Analysis

- Names of competitors: List all of your current competitors and research any that might enter the market during the next year.
- Summary of each competitor's products: This should include location, quality, advertising, staff, distribution methods, promotional strategies, customer service, etc.
- Competitors' strengths and weaknesses: List their strengths and weaknesses from the customer's viewpoint. State how you will capitalize on their weaknesses and meet the challenges represented by their strengths.
- Competitors' strategies and objectives: This information might be easily obtained by getting a copy of their annual report. It might take the analysis of many information sources to understand competitors' strategies and objectives.
- Strength of the market: Is the market for your product growing sufficiently so there are enough customers for all players?

Ideas for Gathering Competitive Information

- Internet: The Internet is a powerful tool for finding information on a variety of topics.
- Personal visits: If possible, visit your competitors' locations. Observe how employees interact with customers. What do their premises look like? How are their products displayed and priced?

- **Talk to customers:** Your sales staff is in regular contact with customers and prospects, as is your competition. Learn what your customers and prospects are saying about your competitors.
- **Competitors' ads:** Analyze competitors' ads to learn about their target audience, market position, product features, benefits, prices, etc.
- **Speeches or presentations:** Attend speeches or presentations made by representatives of your competitors.
- **Trade show displays:** View your competitor's display from a potential customer's point of view. What does their display say about the company? Observing which specific trade shows or industry events competitors attend provides information on their marketing strategy and target market.
- **Written sources:** Use general business publications, marketing and advertising publications, local newspapers and business journals, industry and trade association publications, industry research and surveys, and computer databases (available at many public libraries).

For More Information on This Topic

[SBDC Net Industry Information](#)

Online Marketing

Online Advertising (DOC) ^{xix}

Advertising and Marketing on the Internet: Rules of the Road

(From The Department of Commerce)

The Internet is connecting advertisers and marketers to customers from Boston to Bali with text, interactive graphics, video, and audio. If you're thinking about advertising on the Internet, remember that many of the same rules that apply to other forms of advertising apply to electronic marketing. These rules and guidelines protect businesses and consumers and help maintain the credibility of the Internet as an advertising medium. [The Federal Trade Commission](#) (FTC) has prepared this guide to give you an overview of some of the laws it enforces.

- Advertising must tell the truth and not mislead consumers.
- In addition, claims must be substantiated.

General Offers and Claims Products and Services

The Federal Trade Commission Act allows the FTC to act in the interest of all consumers to prevent deceptive and unfair acts or practices. In interpreting Section 5 of the Act, the Commission has determined that a representation, omission, or practice is deceptive if it is likely to:

- mislead consumers or
- affect consumers' behavior or decisions about the product or service.

In addition, an act or practice is unfair if the injury it causes, or is likely to cause, is:

- substantial,
- not outweighed by other benefits, and
- not reasonably avoidable.

The FTC Act prohibits unfair or deceptive advertising in any medium. That is, advertising must tell the truth and not mislead consumers. A claim can be misleading if relevant information is left out or if the claim implies something that's not true. For example, a lease advertisement for an automobile that promotes "\$0 Down" may be misleading if significant and undisclosed charges are due at lease signing.

In addition, claims must be **substantiated**, especially when they concern health, safety, or performance. The type of evidence may depend on the product, the claims, and what experts believe necessary. If your ad specifies a certain level of support for a claim - "tests show X" - you must have at least that level of support.

Sellers are responsible for claims they make about their products and services. Third parties - such as advertising agencies, website designers, and catalog marketers - also may be liable for making or disseminating deceptive representations if they participate in the preparation or distribution of the advertising, or know about the deceptive claims.

- **Advertising agencies or website designers** are responsible for reviewing the information used to substantiate ad claims. They may not simply rely on an advertiser's assurance that the claims are substantiated. In determining whether an ad agency should be held liable, the FTC looks at the extent of the agency's participation in the preparation of the challenged ad and whether the agency knew or should have known that the ad included false or deceptive claims.
- To protect themselves, **catalog marketers** should ask for material to back up claims rather than repeat what the manufacturer says about the product. If the manufacturer doesn't come forward with proof or turns over proof that looks questionable, the catalog marketer should see a yellow caution light and proceed appropriately, especially when it comes to extravagant performance claims, health or weight loss promises, or earnings guarantees. In writing ad copy, catalogers should stick to claims that can be supported. Most important, catalog marketers should trust their instincts when a product sounds too good to be true.

Other points to consider:

Disclaimers and **disclosures** must be clear and conspicuous. That is, consumers must be able to notice, read or hear, and understand the information. Still, a disclaimer or disclosure alone usually is not enough to remedy a false or deceptive claim.

- **Demonstrations** must show how the product will perform under normal use.
- **Refunds** must be made to dissatisfied consumers if you promised to make them.
- **Advertising directed to children** raises special issues. That's because children may have greater difficulty evaluating advertising claims and understanding the nature of the information you provide. Sellers should take special care not to misrepresent a product or its performance when advertising to children. The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus has published specific guidelines for children's advertising that you may find helpful.

[Dot Com Disclosures: Information About Online Advertising](#)

Motivating Employees to Change Old Habits

Waste reduction hinges on the participation and support of employees, managers, and customers. It involves rethinking the way we do things and changing old habits. This is not easy, but rewards abound as resources and money are saved. Below is advice from experts who have first-hand experience motivating people.

Changing old habits and forming new ones is an ongoing process that begins with exposure to, and assimilation of pertinent information. An individual uses information to create a perception of the relative costs and benefits of adopting a new behavior. If a new practice isn't reinforced by an ongoing perception that benefits outweigh costs, the change will likely be temporary.

It takes, time, patience, and persistence. Here are some ideas that have been used in other businesses to educate and motivate employees to reduce waste.

Creative Images

In our information age where we are bombarded with all kinds of information, it is important to make your message stand out. The right visual impressions can actually be stronger than words.

- Use a catchy logo and slogan for your program.
- Create pictures and graphics to jazz up written materials, recycling containers, and coffee mugs.
- Show people how much waste they generate using photos, videos, displays, [clip art](#), or [posters](#).
- Present a short video to employees.
- Use clip art or posters

Motivating Messages

Facts should be put in terms people can relate to and the message should be easy to understand. A startling fact can help motivate a person to seek change.

- Explain why it is important to stop wasting resources. Where possible, present benefits in terms of cost savings, resources saved, customer satisfaction, corporate and personal responsibility towards future generations.
- Present information so it stands out; avoid being redundant or boring.
- Use startling facts.
- Personalize information and relate it to what a person already knows.

- Don't assume employees and managers are very familiar with key waste reduction words or concepts.
- Avoid giving too much information at once; give information in manageable pieces.

Person-to-Person Communication

In addition to distributing or posting written educational materials, where feasible, present information person-to-person. It is more influential than written materials alone.

- Seek volunteers in each work area who are willing to be trained as "waste reduction pros." The pros provide a friendly and knowledgeable source of information throughout the organization. And they can provide feedback on how you are doing.
- Train new employees. Let them know they are expected to use resources carefully and fully participate in waste reduction programs. Explain how to prevent waste and recycle materials.
- Use all-employee gatherings to promote waste reduction. Show what is being done well and what areas need improvement.

Incentives

There are lots of great ways to motivate employees. Here are just a few:

- Graph progress and show people how they are doing by division, floor or other unit.
- Create a contest and award prizes or trophies (reused, of course).
- Financially reward employees for ideas that generate significant cost savings and waste reduction.
- Offer discounts to employees who purchase coffee using their own washable mug.
- Recognize employee's waste reduction efforts in front of others.

Involve Employees

Employees best know how operations work and are critical to the success of any program.

- Solicit ideas from employees involve them so they have ownership in the program.
- Let employees be part of the decision-making process; invite employees to participate in a waste reduction team that is responsible for implementing waste reduction practices.
- Ask employees to make a waste reduction pledge.

Set a Good Example

To help make new practices mainstream be sure to practice what you preach.

- If using promotional giveaways or prizes, make sure they exemplify waste reduction (e.g., a coffee mug with your program's slogan, a refillable pen made from recycled plastic). Don't give away premiums or materials that will end up in the trash.
- Distribute information in the least wasteful way. Send messages electronically, if that option is available. Route messages or post them on a central bulletin board. Print or copy using both sides of the page and format documents so there isn't excessive white space.
- Ask employees to bring their own plate or mug to gatherings where food and beverages will be served.

<http://www.calrecycle.ca.gov/ReduceWaste/Business/factsheets/motivate.htm>

Protecting Consumers' Privacy Online

The Internet provides unprecedented opportunities for the collection and sharing of information from and about consumers, but studies show that consumers have very strong concerns about the security and confidentiality of their personal information in the online marketplace. Many consumers also report being wary of engaging in online commerce, in part because they fear that their personal information can be misused.

These consumer concerns present an opportunity for you to build on consumer trust by implementing effective voluntary industry-wide practices to protect consumers' information privacy. The FTC has held a number of workshops for industry, consumer groups, and privacy advocates to explore industry guidelines to protect consumers' privacy online.

In June 1998, the FTC issued [Online Privacy: A Report to Congress](#). The Report noted that while over 85 percent of all websites collected personal information from consumers, only 14 percent of the sites in the FTC's random sample of commercial websites provided any notice to consumers of the personal information they collect or how they use it. In May 2000, the FTC issued a follow-up report, [Privacy Online: Fair Information Practices in the Electronic Marketplace \(PDF file\)](#). While the 2000 survey showed significant improvement in the percent of websites that post at least some privacy disclosures, only 20 percent of the random sample sites were found to have implemented four fair information practices: notice, choice, access, and security. Even when the survey looked at the percentage of sites implementing the two critical practices of notice and choice, only 41 percent of the random sample provided such privacy disclosures. You can access the FTC's privacy report at <http://www.ftc.gov/>.

The [Children's Online Privacy Protection Act \(COPPA\)](#) and the FTC's implementing Rule took effect April 21, 2000. Commercial websites directed to children under 13 years old or general audience sites that have actual knowledge that they are collecting information from a child must obtain parental permission before collecting such information.

The FTC also launched a special site at <http://www.ftc.gov/kidzprivacy> to help children, parents, and site operators understand the provisions of COPPA and how the law will affect them.

Management Consulting – History, Facts, and Trends – Wiki View

Management consulting indicates both the industry of, and the practice of, helping organizations improve their performance, primarily through the analysis of existing business problems and development of plans for improvement.

Organizations hire the services of management consultants for a number of reasons, including gaining external (and presumably objective) advice and access to the consultants' specialized expertise.

Because of their exposure to and relationships with numerous organizations, consulting firms are also said to be aware of industry "[best practices](#)", although the transferability of such practices from one organization to another may be problematic depending on the situation under consideration

Consultancies may also provide organizational [change management](#) assistance, development of [coaching](#) skills, technology implementation, strategy development, or operational improvement services. Management consultants generally bring their own, proprietary [methodologies](#) or frameworks to guide the identification of problems, and to serve as the basis for recommendations for more effective or [efficient](#) ways of performing [business](#) tasks.

History

Management consulting grew with the rise of [management](#) as a unique field of study. The first management consulting firm was [Arthur D. Little](#), founded in 1886 by the MIT professor of the same name. Though Arthur D. Little later became a general management consultancy, it originally specialized in technical research. [Booz Allen Hamilton](#) was founded by [Edwin G. Booz](#), a graduate of the [Kellogg School of Management](#) at [Northwestern University](#), in 1914 as a management consultancy and the first to serve both industry and government clients.

After World War II, a number of new management consulting firms formed, most notably [Boston Consulting Group](#), founded in 1963, which brought a rigorous analytical approach to the study of management and strategy. Work done at [Boston Consulting Group](#), [McKinsey](#), [Booz Allen Hamilton](#), and the [Harvard Business School](#) during the 1960s and 70s developed the tools and approaches that would define the new field of [strategic management](#), setting the groundwork for many consulting firms to follow. In 1983, Harvard Business School's influence on the industry continued with the founding of [Monitor Group](#) by six professors.

One of the reasons why management consulting grew first in the USA is because of deep cultural factors: it was accepted there, (contrary to say, Europe), that management and boards alike might not be competent in all circumstances; therefore, buying external competency was seen as a normal way to solve a business problem. This is referred to as a "contractual" relation to management. By contrast, in Europe, management is connected

with emotional and cultural dimensions, where the manager is bound to be competent at all times. This is referred to as the "pater familias" pattern. Therefore seeking (and paying for) external advice was seen as inappropriate. However, it is sometimes argued that in those days the average level of education of the executives was significantly lower in the USA than in Europe, where managers were [Grandes Ecoles](#) graduates (France) or "Doktor" (Germany), though this is very difficult to quantify given the vastly differing management structures in American and European businesses. It was only after World War II, in the wake of the development of the international trade led by the USA, that management consulting emerged in Europe. The current trend in the market is a clear segmentation of management consulting firms.

Approaches

In general, various approaches to consulting can be thought of as lying somewhere along a continuum, with an 'expert' or prescriptive approach at one end, and a facilitative approach at the other. In the expert approach, the consultant takes the role of expert, and provides expert advice or assistance to the client, with, compared to the facilitative approach, less input from, and fewer collaborations with, the client(s). With a facilitative approach, the consultant focuses less on specific or technical expert knowledge, and more on the *process* of consultation itself. Because of this focus on process, a facilitative approach is also often referred to as 'process consulting,' with [Edgar Schein](#) being considered the most well-known practitioner. The consulting firms listed above are closer toward the expert approach of this continuum.

Many consulting firms are organized in a matrix structure, where one 'axis' describes a business function or type of consulting: for example, strategy, operations, technology, executive leadership, [process improvement](#), talent management, sales, etc. The second axis is an industry focus: for example, oil and gas, retail, automotive. Together, these form a matrix, with consultants occupying one or more 'cells' in the matrix. For example, one consultant may specialize in operations for the retail industry, and another may focus on process improvement in the downstream oil and gas industry.

Specializations

Management consulting refers generally to the provision of business consulting services, but there are numerous specializations, such as [information technology consulting](#), [human resource consulting](#), [virtual management consulting](#) and others, many of which overlap, and most of which are offered by the large diversified consultancies listed below. So-called "boutique" consultancies, however, are smaller organizations specializing in one or a few of such specializations.

Current state of the industry

Management consulting has grown quickly, with growth rates of the industry exceeding 20% in the 1980s and 1990s. As a business service, consulting remains highly cyclical and linked to overall economic conditions. The consulting industry shrank during the 2001-2003 period, but has been experiencing slowly increasing growth since.

Currently, there are four main types of consulting firms:

1. Large, diversified organizations that offer a range of services, including [information technology consulting](#), in addition to a strategy consulting practice (e.g. [Accenture](#), [ABeam Consulting](#), [Capgemini](#), [Cognizant](#), [Deloitte](#), [IBM](#), [Logica](#), [PA Consulting](#)). Some very large IT service providers have moved into consultancy as well and are also developing strategy practices (e.g. [Wipro](#), [Tata Consultancy Services](#), [Infosys](#))
2. Medium-sized information technology consultancies, that blend boutique style with some of the same services and technologies bigger players offer their clients.
3. Management and strategic consulting specialists that offer primarily Strategy Consulting and Business Intelligence Models to any industries (e.g. [Oliver Wyman](#), [Bain & Company](#), [Booz & Company](#), [McKinsey & Company](#), [Arthur D. Little](#) and [The Boston Consulting Group](#)).
4. Boutique firms, often quite small, which have focused areas of consulting expertise in specific industries, functional areas or technologies. Most of the boutiques were founded by famous business theorists. Small firms with fewer than 50 employees are often referred to as niche consultancies (e.g. Insight CP in the USA, iProCon Ltd. in the UK, R2P GmbH in Germany, Six Sigma Center of Excellence - SSCX in Indonesia), who help keep prices down and sometimes introduce new ideas emulated by larger competitors. If they have a unique concept and market it successfully, they often grow out of this segment very fast or are bought by larger players interested in their know-how. (e.g. [Tecnova India Pvt.Ltd.](#), Visnova, CPL Business Consultants)

A fifth type that is emerging is the [sourcing advisory](#) firm, that advises buyers on sourcing choices related to [insourcing](#), [outsourcing](#), vendor selection, and contract negotiations. The top 10 [sourcing advisors](#) (as ranked by the Black Book of Outsourcing) were TPI, [Gartner](#), Hackett Group, [Everest Group](#), [PwC](#), [Avasant](#), [PA Consulting](#), and EquaTerra.^[1] Although a fast growing sector, the largest sourcing advisory practices would likely be classified as boutiques when considering the management consulting industry as a whole - with one of the largest players, TPI, for example, citing 2006 revenues of less than US\$150M during its acquisition by ISG.

Another method of differentiation of consulting firms is on the basis of revenue model:

1. Based on time & effort: Most firms charge only on a time & effort basis. They use case studies & past record to justify the fees. e.g McKinsey, BCG, etc.
2. Based on results delivered only: Very few & usually small firms which have an excellent success rate charge on this basis.
3. Combination of both: Many of the larger firms take a part of the remuneration on the basis of delivered results. But usually the variable component is only 20-30% of the total.

Management Consulting Trends

Management consulting is becoming more prevalent in non-business related fields as well. As the need for professional and specialized advice grows, other industries such as government, quasi-government and not-for-profit agencies are turning to the same managerial principles that have helped the private sector for years.

An industry structural trend which arose in the early part of the 21st century was the spin-off or separation of the consulting and accounting units of the large diversified professional advisory firms most notably Ernst & Young, PwC and KPMG. For these firms, which began business as accounting and audit firms, management consulting was a new extension to their business. But after a number of highly publicized scandals over accounting practices, such as the [Enron](#) scandal, these firms began divestiture of their management consulting units, to more easily comply with the tighter regulatory scrutiny that followed. In some parts of the world this trend is now being reversed where the firms are rapidly rebuilding their management consulting arms as their corporate websites clearly demonstrate.

Rise of Internal Corporate Consulting Groups

Added to these approaches are corporations that set up their own internal consulting groups, hiring *internal management consultants* either from within the corporation or from external firms employees. Many corporations have internal groups of as many as 25 to 30 full-time consultants.

Internal consulting groups are often formed around a number of practice areas, commonly including: organizational development, process management, information technology, [design services](#), training, and development.

Advantages

There are several potential benefits of internal consultants to those who employ them:

- If properly managed and empowered, internal consulting groups evaluate engagement on projects in light of the corporation's strategic and tactical objectives.
- Often, the internal consultant requires less ramp up time on a project due to familiarity with the corporation, and is able to guide a project through to implementation—a step that would be too costly if an external consultant were used.
- Internal relationship provides opportunities to keep certain corporate information private.
- It is likely that the time and materials cost of internal consultants is significantly less than external consultants operating in the same capacity.
- Internal consulting positions can be used to recruit and develop potential senior managers of the organization.

Note: Corporations need to be conscious of and consistent with how internal consultant costs are accounted for on both a project and organizational level to evaluate cost effectiveness.

- Internal consultants are often uniquely suited to
 1. Lead external consulting project teams, or
 2. Act as organizational subject matter experts 'embedded' with external consulting teams under the direction of organizational management.

A group of internal consultants can closely monitor and work with external consulting firms. This would ensure better delivery, quality, and overall operating relationships.

External firms providing consulting services have a dichotomy in priority. The health of the external firm is in aggregate more important than that of their client (though of course the health of their client can have a direct impact on their own health).

Disadvantages

- The internal consultant may not bring the objectivity to the consulting relationship that an external firm can.
- An internal consultant also may not bring to the table [best practices](#) from other corporations. A way to mitigate this issue is to recruit experience into the group and/or proactively provide diverse training to internal consultants.
- Where the consulting industry is strong and consulting compensation high, it can be difficult to recruit candidates.
- It is often difficult to accurately measure the true costs and benefits of an internal consulting group.
- When financial times get tough, internal consulting groups that have not effectively demonstrated economic value (costs vs. benefits) are likely to face size reductions or reassignment.

Governmental Spending on Consulting - United Kingdom

From 1997 to 2006, Labour governments have spent £20 billion for management consultants and at least another £50 billion for IT systems, up significantly from the £500 million a year spent by the previous [Conservative](#) government.^[2] From 2003–2006 spending on consultants has risen by a third, from £2.1 billion in 2003–04 to £2.8 billion in 2005–06, largely due to increases in spending by the [National Health Service](#). In the past three years £7.2 billion has been spent on consultancy services from large consultancy firms.^[3]

Management Consulting Companies Rating

The webservice "vault.com" prepares a list of the top 50 consulting companies to work for each year. The ranking considers company culture, practice strength, prestige and compensation (6 percent), among a few other options. The top 25 for 2011 are:

1. [Bain & Company](#) (8.492)
2. [Boston Consulting Group](#) (8.176)
3. [McKinsey & Company](#) (8.159)
4. [Analysis Group](#) (7.251)
5. [The Cambridge Group](#) (7.178)
6. [Deloitte Consulting LLP](#) (7.162)
7. [Oliver Wyman](#) (7.123)
8. [A.T. Kearney](#) (7.089)
9. [Triage Consulting Group](#) (7.024)
10. [Censeo Consulting Group](#) (6.903)
11. [West Monroe Partners](#) (6.899)
12. [Cornerstone Research](#) (6.897)
13. [PricewaterhouseCoopers LLP](#) (6.89)
14. [Alvarez & Marsal](#) (6.844)
15. [Trinity Partners, LLC](#) (6.84)
16. [Booz & Company](#) (6.814)
17. [Milliman, Inc](#) (6.795)
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19. [PRTM](#) (6.769)
20. [Gallup Consulting](#) (6.761)
21. [Diamond Management & Technology Consultants](#) (6.753)
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Criticism

Despite consistently high and growing revenues, management consultancy also consistently attracts a significant amount of criticism, both from clients as well as from management scholars. "Management [consultants](#) are often criticized for overuse of [buzzwords](#)^[4], reliance on and propagation of [management fads](#), and a failure to develop plans that are executable by the client." A number of critical books about management consulting argue that the mismatch between management consulting advice and the ability of business executives to actually create the change suggested results in substantial damages to existing businesses.^[5] In his book "Flawed Advice and the Management Trap,"

[Chris Argyris](#) believes that much of the advice given today has much in it of real merit. However, a close examination shows that most advice given today contains gaps and inconsistencies that may prevent positive outcomes in the future.^[6]

Disreputable consulting firms are often accused of delivering empty promises, despite high fees. They are often charged with "stating the obvious" and with lacking the experience on which to base their advice. These consultants bring few innovations, instead offering generic and "prepackaged" strategies and plans that are irrelevant to the client's particular issue. They may fail to prioritize their responsibilities, placing their own firm's interests before the clients'.^[7]

Another concern is the promise of consulting firms to deliver on the sustainability of results. At the end of an engagement between the client and consulting firms, there is often an expectation that the consultants will audit the project results for a period of time to ensure that their efforts are sustainable. Although sustainability is promoted by some consulting firms, it is difficult to implement because of the disconnect between the client and consulting firms after the project closes.

Further criticisms include: disassembly of the business (by firing employees) in a drive to cut costs^[4], only providing analysis reports, junior consultants charging senior rates, reselling similar reports to multiple clients as "custom work", lack of innovation, overbilling for days not worked, speed at the cost of quality, unresponsive large firms and lack of (small) client focus, lack of clarity of deliverables in contracts^[8], and secrecy^[9].

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Management Consulting Glossary

Glossary of Terms

ACCOUNTS PAYABLE

Trade accounts of businesses representing obligations to pay for goods and services received.

ACCOUNTS RECEIVABLE

Trade accounts of businesses representing moneys due for goods sold or services rendered evidenced by notes, statements, invoices, or other written evidence of a present obligation.

ACCOUNTING

The recording, classifying, summarizing, and interpreting in a significant manner and in terms of money, transactions, and events of a financial character.

ASSUMPTIONS

The act of assuming/undertaking another's debts or obligations.

AUCTION

A public sale of goods to the highest bidder.

AUTOMATIC DATA PROCESSING

Data processing largely performed by automatic means.

The discipline which deals with methods and techniques of automatic data processing. Pertaining to data processing equipment such as electrical accounting machines and electronic data processing equipment.

BANKRUPTCY

A condition in which a business cannot meet its debt obligations and petitions a federal district court for either reorganization of its debts or liquidation of its assets. In the action the property of a debtor is taken over by a receiver or trustee in bankruptcy for the benefit of the creditors. This action is conducted as prescribed by the National Bankruptcy Act, and may be voluntary or involuntary.

BREAKEVEN POINT

The breakeven point in any business is that point at which the volume of sales or revenues exactly equals total expenses - the point at which there is neither a profit nor loss - under varying levels of activity. The breakeven point tells the manager what level of output or activity is required before the firm can make a profit; reflects the relationship between costs, volume, and profits.

BUSINESS BIRTH

Formation of a new establishment or enterprise.

BUSINESS DEATH

Voluntary or involuntary closure of a firm or establishment.

BUSINESS DISSOLUTION

For enumeration purposes, the absence from any current record of a business that was present in a prior time period.

BUSINESS FAILURE

The closure of a business causing a loss to at least one creditor.

BUSINESS PLAN

A comprehensive planning document which clearly describes the business developmental objective of an existing or proposed business applying for assistance in SBA's 8(a) or lending programs. The plan outlines what and how and from where the resources needed to accomplish the objective will be obtained and utilized.

BUSINESS START

For enumeration purposes, a business with a name or similar designation that did not exist in a prior time period.

CANCELED LOAN

The annulment or rescission of an approved loan prior to disbursement.

CAPITAL

Assets less liabilities, representing the ownership interest in a business; a stock of accumulated goods, especially at a specified time and in contrast to income received during a specified time period; accumulated goods devoted to the production of goods; (4) accumulated possessions calculated to bring income.

CAPITAL EXPENDITURES

Business spending on additional plant equipment and inventory.

CAPITALIZED PROPERTY

Personal property of the agency which has an average dollar value of \$300.00 or more and a life expectancy of one year or more. Capitalized property shall be depreciated annually over the expected useful life to the agency.

CASH DISCOUNT

An incentive offered by the seller to encourage the buyer to pay within a stipulated time. For example, if the terms are 2/10/N 30, the buyer may deduct 2 percent from the amount of the invoice (if paid within 10 days); otherwise, the full amount is due in 30 days.

CASH FLOW

An accounting presentation showing how much of the cash generated by the business remains after both expenses (including interest) and principal repayment on financing are paid. A projected cash flow statement indicates whether the business will have cash to pay its expenses, loans, and make a profit. Cash flows can be calculated for any given period of time, normally done on a monthly basis.

CHARACTER

A letter, digit, or other symbol that is a part of the organization, control, or representation of data used in computer systems.

CHARGE-OFF

An accounting transaction removing an uncollectible balance from the active receivable accounts.

CHARGED OFF LOAN

An uncollectible loan for which the principal and accrued interest were removed from the receivable accounts.

CLOSING

Actions and procedures required to affect the documentation and disbursement of loan funds after the application has been approved and the execution of all required documentation and its filing and recording where required.

CLOSED LOAN

Any loan for which funds have been disbursed and all required documentation has been executed, received, and reviewed. For statistical purposes, first or total disbursement is counted as a closed loan.

COLLATERAL

Something of value - securities, evidence of deposit, or other property - pledged to support the repayment of an obligation.

COLLATERAL DOCUMENT

A legal document covering the item(s) pledged as collateral on a loan, i.e., note, mortgages, assignment, etc.

CONSORTIUM

A coalition of organizations, such as banks and corporations, set up to fund ventures requiring large capital resources.

CORPORATION

A group of persons granted a state charter legally recognizing them as a separate entity having its own rights, privileges, and liabilities distinct from those of its members. The process of incorporating should be completed with the state's secretary of state or state corporate counsel, and usually requires the services of an attorney.

COMPROMISE

The settlement of a claim resulting from a defaulted loan for less than the full amount due. Compromise settlement is a procedure available for use only in instances where the government cannot collect the full amount due within a reasonable time, by enforced collection proceedings, or where the cost of such proceedings would not justify such effort.

CONTINGENT LIABILITY

A potential obligation that may be incurred dependent upon the occurrence of a future event. Two examples are: (1) the liability of an endorser or guarantor of a note if the primary borrower fails to pay as agreed and (2) the liability that would be incurred if a pending lawsuit is resolved in the other party's favor.

COSTS

Money obligated for goods and services received during a given period of time, regardless of when ordered or whether paid for.

CREDIT RATING

A grade assigned to a business concern to denote the net worth and credit standing to which the concern is entitled in the opinion of the rating agency as a result of its investigation.

DATA ELEMENT

The basic unit of identifiable and definable information. A data element occupies the space provided by fields in a record or blocks on a form. It has an identifying name and value or values for expressing a specific fact. For example, a data element named "Color of Eyes" could have recorded values of "Blue (a name)," "Bl (an abbreviation)," "06 (a code)." Similarly, a data element named "Age of Employee" could have a recorded value of "28" (a numeric value).

DEBENTURE

Debt instrument evidencing the holder's right to receive interest and principal installments from the named obligor. Applies to all forms of unsecured, long-term debt evidenced by a certificate of debt.

DEBT CAPITAL

Business financing that normally requires periodic interest payments and repayment of the principal within a specified time.

DEBT FINANCING

The provision of long term loans to small business concerns in exchange for debt securities or a note.

DEED OF TRUST

A document under seal which, when delivered, transfers a present interest in property. May be held as collateral.

DEFAULTS

The nonpayment of principal and/or interest on the due date as provided by the terms and conditions of the note.

DEFERRED LOAN

Loans whose principal and or interest installments are postponed for a specified period of time.

DISBURSEMENT

The actual payout to borrower of loan funds, in whole or part. It may be concurrent with the closing or follow it.

DISBURSING OFFICER

An employee authorized to pay out cash or issue checks in settlement of vouchers approved by a certifying officer.

DIVESTITURE

Change of ownership and/or control of a business from a majority (non-disadvantaged) to disadvantaged persons.

EARNING POWER

The demonstrated ability of a business to earn a profit, over time, while following good accounting practices. When a business shows a reasonable profit on invested capital after fully maintaining the business property, appropriately compensating its owner and employees, servicing its obligations, and fully recognizing its costs, the business may be said to have demonstrated earning power. Demonstrated earning power is the foremost test of the business risk in pressing upon an application for a loan.

EASEMENT

A right or privilege that a person may have on another's land, as the right of a way or ingress or egress.

EMPLOYEE ASSISTANCE PROGRAM (EAP) COORDINATOR

Coordinates the activities of Central Office or regional counselors, maintains a community resource list of available professional assistance to troubled employees, and a current roster of EAP counselors for the area of his/her jurisdiction.

EAP COUNSELOR

Conducts confidential consultations with troubled employees who so request, who are referred for objective analysis of a personal problem, and for identification of the best available assistance and/or professional services needed to resolve the employee's problem.

ENTERPRISE

Aggregation of all establishments owned by a parent company. An enterprise can consist of a single, independent establishment or it can include subsidiaries or other branch establishments under the same ownership and control.

ENTREPRENEUR

One who assumes the financial risk of the initiation, operation, and management of a given business or undertaking.

EQUITY

An ownership interest in a business.

EQUITY FINANCING

The provision of funds for capital or operating expenses in exchange for capital stock, stock purchase warrants, and options in the business financed without any guaranteed return, but with the opportunity to share in the company's profits. Equity financing includes long-term subordinated securities containing stock options and/or warrants. Utilized in SBIC financing activities.

EQUITY PARTNERSHIP

A limited partnership arrangement for providing startup and seed capital to businesses.

ESCROW ACCOUNTS

Funds placed in trust with a third party by a borrower for a specific purpose and to be delivered to the borrower only upon the fulfillment of certain conditions.

ESTABLISHMENT

A single-location business unit, which may be independent - called a single- establishment enterprise - or owned by a parent enterprise.

FINANCIAL REPORTS

Reports commonly required from applicants request for financial assistance, e.g.:

Balance Sheet - A report of the status of a firm's assets, liabilities and owner's equity at a given time.

Income Statement - A report of revenue and expense which shows the results of business operations or net income for a specified period of time.

Cash Flow

A report which analyzes the actual or projected source and disposition of cash during a past or future accounting period.

FINANCING

New funds provided to a business, by either loans, purchase of debt securities, or capital stock.

FLOW CHART

A graphical representation for the definition, analysis, or solution of a problem, in which symbols are used to represent operations, data, flow, equipment, etc.

FORECLOSURE

The act by the mortgagee or trustee upon default in the payment of interest or principal of a mortgage of enforcing payment of the debt by selling the underlying security.

FRANCHISING

A continuing relationship in which the franchisor provides a licensed privilege to the franchisee to do business and offers assistance in organizing, training, merchandising, marketing, and managing in return for a consideration. Franchising is a form of business by which the owner (franchisor) of a product, service, or method obtains distribution through affiliated dealers (franchisees). The product, method, or service being marketed is usually identified by the franchisor's brand name, and the holder of the privilege (franchisee) is often given exclusive access to a defined geographical area.

GROSS DOMESTIC PRODUCT (GDP)

The most comprehensive single measure of aggregate economic output. Represents the market value of the total output of the goods and services produced by a nation's economy.

GROSS NATIONAL PRODUCT (GNP)

A measure of a nation's aggregate economic output. Since 1991 GDP, a slightly different calculation, has replaced GNP as a measure of U.S. economic output.

GUARANTEED LOAN

A loan made and serviced by a lending institution under agreement that a governmental agency will purchase the guaranteed portion if the borrower defaults.

HARDWARE

A term used to describe the mechanical, electrical, and electronic elements of a data processing system.

HAZARD INSURANCE

Insurance required showing lender as loss payee covering certain risks on real and personal property used for securing loans.

INCUBATOR

A facility designed to encourage entrepreneurship and minimize obstacles to new business formation and growth, particularly for high technology firms, by housing a number of fledgling enterprises that share an array of services. These shared services may include meeting areas, secretarial services, accounting services, research libraries, on-site financial and management counseling, and word processing facilities.

INDEPENDENT AND QUALIFIED PUBLIC ACCOUNTANTS

Public accountants are independent when neither they nor any of their family have a material, direct, or indirect financial interest in the borrower other than as an accountant. They are qualified, unless there is contrary evidence, when they are either (1) certified, licensed, or otherwise registered if so required by the state in which they work, or (2) have worked as a public accountant for at least five years and are accepted by SBA.

INDUSTRIAL REVENUE BOND (IRB)

A tax-exempt bond issued by a state or local government agency to finance industrial or commercial projects that serve a public good. The bond usually is not backed by the full faith and credit of the government that issues it, but is repaid solely from the revenues of the project and requires a private sector commitment for repayment.

INNOVATION

Introduction of a new idea into the marketplace in the form of a new product or service or an improvement in organization or process.

INSOLVENCY

The inability of a borrower to meet financial obligations as they mature or having insufficient assets to pay legal debts.

INTEREST

An amount paid a lender for the use of funds.

INVERSE ORDER OF MATURITY

When payments are received from borrowers that are larger than the authorized repayment schedules, the overpayment is credited to the final installments of the principal, which reduces the maturity of the loan and does not affect the original repayment schedule.

INVESTMENT BANKING

Businesses specializing in the formation of capital. This is done by outright purchase and sale of securities offered by the issuer, standby underwriting, or "best efforts selling."

INVITATION FOR BIDS

Formal solicitations for offerings to perform procurements by competitive bids when the specifications describe the requirements of the government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders.

JOB DESCRIPTION

A written statement listing the elements of a particular job or occupation, e.g., purpose, duties, equipment used, qualifications, training, physical and mental demands, working conditions, etc.

JUDGMENT

Judicial determination of the existence of an indebtedness or other legal liability.

JUDGMENT BY CONFESSION

The act of debtors permitting judgment to be entered against them for a given sum with a statement to that effect, without the institution of legal proceedings.

JUNK BOND

A high-yield corporate bond issue with a below-investment rating that became a growing source of corporate funding in the 1980s.

LEASE

A contract between the owner (lessor) and the tenant (lessee) stating the conditions under which the tenant may occupy or use the property.

LEGAL RATE OF INTEREST

The maximum rate of interest fixed by the laws of the various states which a lender may charge a borrower for the use of money.

LENDING INSTITUTION

Any institution, including a commercial bank, savings and loan association, commercial finance company, or other lender qualified to participate with SBA in the making of loans.

LEVERAGED BUY-OUT

The purchase of a business with financing provided largely by borrowed money, often in the form of junk bonds.

LIEN

A charge upon or security interest in real or personal property maintained to ensure the satisfaction of a debt or duty ordinarily arising by operation of law.

LIQUIDATION

The disposal, at maximum prices, of the collateral securing a loan and the voluntary and enforced collection of the remaining loan balance from the obligators and/or guarantors.

LIQUIDATION VALUE

The net value realizable in the sale (ordinarily a forced sale) of a business or a particular asset.

LITIGATION

Refers to a loan in "liquidation status" which has been referred to attorneys for legal action. Also: The practice of taking legal action through the judicial process.

LOAN AGREEMENT

Agreement to be executed by borrower, containing pertinent terms, conditions, covenants, and restrictions.

LOAN PAYOFF AMOUNT

The total amount of money needed to meet a borrower's obligation on a loan. It is arrived at by accruing gross interest for one day and multiplying this figure by the number of days that exist between the date of the last repayment and the date on which the loan is to be completely paid off. This amount, known as accrued interest, is combined with the latest principal and escrow balances that are applicable to what is now referred to as the loan payoff amount. In the case where prepaid interest exceeds the accrued interest, the latter is subtracted from the former and the difference is used to reduce the total amount owed.

LOSS RATE

A rate developed by comparing the ratio of total loans charged off to the total loans disbursed from inception of the program to the present date.

LOSS RESERVE ADJUSTMENT RATE A reserve rate based upon the ratio of the aggregate net chargeoffs (chargeoffs less recoveries) for the most recent five years to the total average loans outstanding for the comparable 5-year period.

MARKUP

Markup is the difference between invoice cost and selling price. It may be expressed either as a percentage of the selling price or the cost price and is supposed to cover all the costs of doing business plus a profit. Whether markup is based on the selling price or the cost price, the base is always equal to 100 percent.

MATURITY

As applied to securities and commercial paper, the period end date when payment of principal is due.

MATURITY EXTENSIONS

Extensions of payment beyond the original period established for repayment of a loan.

MERGER

A combination of two or more corporations wherein the dominant unit absorbs the passive ones, the former continuing operation usually under the same name. In a consolidation two units combine and are succeeded by a new corporation, usually with a new title.

MORTGAGE

An instrument giving legal title to secure the repayment of a loan made by the mortgagee (lender). In legal contemplation there are two types: (1) title theory - operates as a transfer of the legal title of the property to the mortgagee, and (2) lien theory - creates a lien upon the property in favor of the mortgagee.

NEGOTIATION

The face to face process used by local unions and the employer to exchange their views on those matters involving personnel policies and practices or other matters affecting the working conditions of employees in the unit and reduced to a written binding agreement. Used also by contracting officers to reach agreement with potential contractors.

NEGOTIATION DISPUTE

That point in negotiations where labor and management cannot come to an agreement on some or all of the issues on the bargaining table and the services of the FMCS have not been utilized.

NEGOTIATED GRIEVANCE PROCEDURE

The sole and exclusive procedure available to all employees in a bargaining unit and the employer for processing grievances and disputes.

NET WORTH

Property owned (assets), minus debts and obligations owed (liabilities), is the owner's equity (net worth).

NOTES AND ACCOUNTS RECEIVABLE

A secured or unsecured receivable evidenced by a note or open account arising from activities involving liquidation and disposal of loan collateral.

OBLIGATIONS

Technically defined as "amount of orders placed, contracts awarded, services received, and similar transactions during a given period which will require payments during the same or a future period."

ORDINARY INTEREST

Simple interest based on a year of 360 days, contrasting with exact interest having a base year of 365 days.

OUTLAYS

Net disbursements (cash payments in excess of cash receipts) for administrative expenses and for loans and related costs and expenses (e.g., gross disbursements for loans and expenses minus loan repayments, interest and fee income collected, and reimbursements received for services performed for other agencies).

PARTNERSHIP

A legal relationship existing between two or more persons contractually associated as joint principals in a business.

PATENT

A patent for an invention is the grant of a property right to the inventor, issued by the Patent and Trademark Office. The term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. US patent grants are effective only within the US, US territories, and US possessions.

PRIME RATE

Interest rate which is charged to business borrowers having the highest credit ratings for short term borrowing.

PRO-Net

An Internet-based database of information of small, disadvantaged, 8(a), and women-owned businesses seeking procurement contracts.

PRODUCT LIABILITY

Type of tort or civil liability that applies to product manufacturers and sellers.

PROFESSIONAL AND TRADE ASSOCIATIONS

Non-profit, cooperative, and voluntary organizations that are designed to help their members in dealing with problems of mutual interest. In many instances, professional and trade associations enter into an agreement with the SBA to provide volunteer counseling to the small business community.

PROPRIETORSHIP

The most common legal form of business ownership; about 85 percent of all small businesses are proprietorships. The liability of the owner is unlimited in this form of ownership.

PROTEST

A statement in writing by any bidder or offeror on a particular procurement alleging that another bidder or offeror on such procurement is not a small business concern.

RATIO

Denotes relationships of items within and between financial statements, e.g., current ratio, quick ratio, inventory turnover ratio, and debt/net worth ratios.

REQUEST FOR PROPOSALS

Solicitations for offerings for competitive negotiated procurements when it is impossible to draft an invitation for bids containing adequate detailed description of the required property and services. There are 15 circumstances in the Federal Acquisition Regulations (FAR) which permit negotiated procurements.

RETURN ON INVESTMENT

The amount of profit (return) based on the amount of resources (funds) used to produce it. Also the ability of a given investment to earn a return for its use.

SECONDARY MARKET

Those who purchase an interest in a loan from an original lender, such as banks, institutional investors, insurance companies, credit unions, and pension funds.

SERVICE CORPS OF RETIRED EXECUTIVES (SCORE)

Retired and working successful business persons who volunteer to render assistance in counseling, training, and guiding small business clients.

SMALL BUSINESS DEVELOPMENT CENTERS (SBDC)

The SBDC is a university-based center for the delivery of joint government, academic, and private sector services for the benefit of small business and the national welfare. It is committed to the development and productivity of business and the economy in specific geographical regions.

TURNOVER (Business)

Turnover is the number of times that an average inventory of goods is sold during a fiscal year or some designated period. Care must be taken to ensure that the average inventory and net sales are both reduced to the same denominator; that is, divide inventory at cost into sales at cost or divide inventory at selling price into sales at selling price. Do not mix cost price with selling price. The turnover, when accurately computed, is one measure of the efficiency of a business.

UNDELIVERED ORDERS

The amount of orders for goods and services outstanding for which the liability has not yet accrued. For practical purposes, represents obligations incurred for which goods have not been delivered or services not performed.

UNFAIR LABOR PRACTICE

Action by either the employer or union which violates the provisions of EO 11491 as amended.

UNIFORM COMMERCIAL CODE

Codification of uniform laws concerning commercial transactions. In SBA parlance, generally refers to a uniform method of recording and enforcing a security interest or charge upon existing or to be acquired personal property.

USURY

Interest which exceeds the legal rate charged to a borrower for the use of money.

VENTURE CAPITAL

Money used to support new or unusual commercial undertakings; equity, risk, or speculative capital. This funding is provided to new or existing firms that exhibit above-average growth rates, a significant potential for market expansion, and the need for additional financing for business maintenance or expansion.

WORKERS' COMPENSATION

A state-mandated form of insurance covering workers injured in job-related accidents. In some states the state is the insurer; in other states insurance must be acquired from commercial insurance firms. Insurance rates are based on a number of factors, including salaries, firm history, and risk of occupation.

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i

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ii

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iii

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