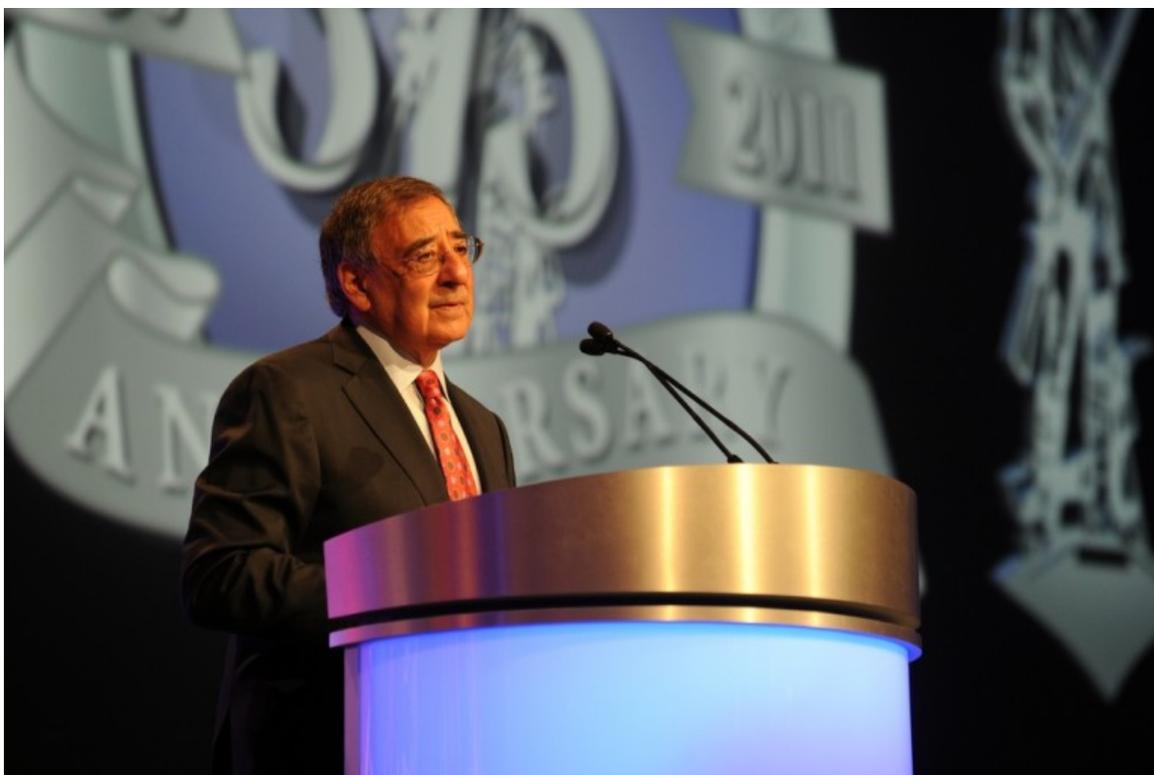




Note: The stipulated court order resulting from Blue Shield's lawsuit over my whistleblowing prohibits me from mentioning certain public information about Blue Shield. As a result, I had to redact certain information from this article before presenting it.

EXECUTIVE COMPENSATION, TAX EXEMPTION REVOCATIONS

Questions about Leon Panetta, Blue Shield of California, & The Nonprofit Sector



Secretary of Defense Leon Panetta / [Jim Greenhill](#)

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Some of the very important side benefits from Michael Johnson's ongoing scrutiny of Blue Shield of California's efforts to get back its tax exempt status are the lessons for nonprofits overall.

Johnson, the former director of public policy for Blue Shield, questions Leon Panetta's future agenda as a member of the Blue Shield of California board of directors in light of [this statement of Panetta's](#): "I have chosen to serve on the board of Blue Shield because it is a not-for-profit health plan...Blue Shield is focused on the long-term welfare of

the entire community, not just its members.”

Since Panetta joined the board, [the California Franchise Tax board pulled Blue Shield’s tax exemption](#) on the grounds [REDACTED] Last month, solid investigative digging by *Los Angeles Times* reporter Chad Terhune [revealed](#) [REDACTED] Blue Shield. According to Johnson, in response to these events, “Blue Shield is now asserting it has no obligation at all to serve the public interest.”

The Blue Shield statement is the crux of the controversy, and the answers will speak volume to nonprofits across the country. What does it mean for a nonprofit to “serve the public interest,” given that there is no one “public” whose interests might be measured against? Is the “public interest” itself an archaic concept that doesn’t fit today’s nonprofit sector, where tax exemptions and 501(c)(3) approvals are as easy to get as a cup of coffee?

With his deep insider’s knowledge, Johnson asserts that Blue Shield behaves like, and perhaps *thinks* like, a for-profit company, “stockpiling over \$4 billion in reserves, paying multi-million dollar executive salaries, and charging rates just as high as for-profit insurers.” Johnson questions, however, whether the Franchise Board’s action will actually get the state to extract some public benefit from “the billions of dollars in community assets bound up in Blue Shield.”

Revisiting Blue Shield’s assets for potential untapped public benefits is a battle for health regulators, health policy activists, and California’s citizens to fight. For this column, the question is broader, whether Blue Shield or any nonprofit can simply redefine and eschew its public interest obligations.

“Blue Shield has argued to the [Department of Managed Health Care] that it is a special type of nonprofit that has no obligation to do public good, akin to the Olympic Club, a tony San Francisco social club, or the Academy of Motion Picture Arts and Sciences, which puts on the Oscars,” Johnson writes. “Blue Shield ‘operates only for the benefit of its policyholders and not the public at large,’ its lawyers say.” In other words, Blue Shield operates in the interest of or benefit for a narrowly defined “public”—its policyholders.

Isn’t this a legitimate question for many nonprofits—or perhaps all nonprofits, not just health insurers, and for that matter, nonprofit foundations? How are they—or we—defining and carrying out activities and programs to promote the social welfare? This author remembers a senior program officer at a very large foundations some years ago noting that the foundation grilled its grantees on their public benefit, but never ever turned the scrutiny inward to assess on balance just how much of its assets and efforts promoted the public welfare and how much didn’t.

Johnson’s questions about Blue Shield, albeit focusing on the peculiarities of nonprofit health insurers and legitimately so, have broader implications. Just how nonprofit are some nonprofit health insurers or other mammoth healthcare entities? [We have asked the same](#), but the relevance of the challenge is for all of us to examine again and again what our organizations are doing to promote the public welfare, not to take it for granted. It is a core mission question that shouldn’t be tossed to the curb.

Then, there is his challenge to Leon Panetta. What did he actually mean by his statements about Blue Shield’s nonprofit status when he joined the board? *NPQ* raised the same about Panetta, but [also other Blue Shield board members with strong nonprofit credentials](#), such as Sandra Hernandez, the former CEO of the San Francisco Foundation. We asked:

Have these nonprofit- and public service-credentialed board members been taking Blue Shield's nonprofit pulse and questioning whether its massive reserve and its multi-million dollar executive compensation packages are a little too for-profit for Blue Shield's nonprofit DNA? Are the board members themselves paid?... Did Panetta, Hernandez, and [former Centers for Medicare and Medicaid Services senior official Gary] Cohen go along with Blue Shield's \$2.5 million acquisition of a luxury box at the pro football stadium in Santa Clara, a move that reeks of the kind of corporate self-indulgence that nonprofits don't expect to see from their tax-exempt brethren? Have these nonprofit leaders supported Blue Shield's long resistance to the kind of disclosure that most nonprofits around the nation accept automatically?

Fundamentally, Johnson is asking about the board's attentiveness to and scrutiny of Blue Shield's tax-exempt mission. Panetta is himself an interesting player in the nonprofit sector. Until recently, he was [on the board of Corinthian Colleges](#), one of the truly abominable for-profit colleges that epitomizes what might be wrong with some of that part of the higher education sector, but [his resignation](#) made at the height of the criticism of Corinthian did not question Corinthian's behavior or his part in it as a board member (rather, he challenged the "slanted and misinformed" critiques the for-profit had been subjected to). Having done immense damage to the Gulf Coast, [BP named Panetta to its board of advisors](#), though it isn't clear whether he is still helping guide BP through its thicket of environmental destruction. This year, the former Secretary of Defense and former Director of the CIA [joined the board of Oracle](#).

For the record, [Panetta's 2009 disclosure statement as Director of the CIA](#) revealed directors' fees of \$120,000 from Fleischman-Hilliard, \$11,500 from Corinthian, \$125,000 from BP, \$170,000 from Zenith National Insurance Company, and a for-profit-sounding \$93,250 from Blue Shield of California. A member of the board only between April and July of 2013, Panetta's fees for Corinthian might have been for just a partial year, as a Corinthian spokesperson told the *New Republic* in 2013 [that directors' fees at the for-profit school were typically \\$60,000 plus stock](#) toward a total compensation target of \$90,000, and [Corinthian reports that Panetta voluntarily returned his fee and forfeited his stock options](#).

While he was [on the board of directors of the New York Stock Exchange](#), the NYSE's foundation [made grants to the Leon and Sylvia Panetta Institute for Public Policy](#), not the preferred mechanism for ensuring board member diligence in oversight and governance. Panetta was [appointed to the Blue Shield of California board of directors](#) in 2000, leaving the board in 2009, but rejoining it in 2013. In November of 2009, the [Blue Shield of California Foundation made a \\$20,000 general operating support grant to the Panetta Institute](#), hardly a make-or-break grant for the Panetta Institute's finances, but still one that leaves an impression of a less-than-arm's-length transaction.

The lesson in Johnson's questions for Blue Shield and for Panetta is not that he has discovered something illegal, but that he is asking both the institution and its governing officials to think long and hard about what they are doing that warrants a nonprofit Good Housekeeping seal of approval. Johnson's questions of Blue Shield and of Panetta might well be asked of many more nonprofit organizations and their boards.—Rick Cohen

ABOUT THE AUTHOR



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Rick joined NPQ in 2006, after almost eight years as the executive director of the National Committee for Responsive Philanthropy (NCRP). Before that he played various roles as a community worker and advisor to others doing community work. He also worked in government. Cohen pursued investigative and analytical articles, advocated for increased philanthropic giving and access for disenfranchised constituencies, and promoted increased philanthropic and nonprofit accountability.