

IMPLEMENTING THE NONPROFIT REVITALIZATION ACT-THINKING ABOUT CONFLICTS OF INTEREST

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Thank you

- To Jack Krauskopf and Baruch College for the invitation and setting
- To you as attendees for taking time to help us in supporting the good guys
- To your organizations for the work you do in the nonprofit organizations of New York

A little about us . . .

- Charities Bureau for NY Attorney General Eric Schneiderman
- Regulation and Support of New York's Non-Profit sector-1.2 million employees, 80,000 registered organizations



New York State Attorney General
Eric T. Schneiderman

***“OUR JOB AS A REGULATOR ISN’T
JUST TO GO OUT AND CATCH BAD
GUYS, IT’S ALSO TO HELP THE
GOOD GUYS CONDUCT THEIR
BUSINESS EFFICIENTLY AND
EFFECTIVELY.”***

JIM SHEEHAN, CHIEF, CHARITIES BUREAU



HOW THIS PRESENTATION WORKS

- INTRODUCTION-THE CHARITIES WORLD AND CONFLICTS OF INTEREST
- THE NONPROFIT REVITALIZATION ACT
- OTHER ISSUES FOR CHARITIES

NOT-FOR-PROFIT SECTOR IN NEW YORK

- 1.25 million employees
- 18 per cent of total private work force in 2010, (Johns Hopkins study)
- more than \$57 billion in wages (2010)
- Average wage \$45,000
- 22,000 state contracts-\$11 billion/year
- Social services, health services, arts and music, medical and scientific research, community support and assistance

NY CHARITIES BUREAU POWERS

- Section 112(a) of the Not-for-Profit Corporation Law:
- (7)“to enforce any right given under this Chapter to members, a director, or an officer of a charitable corporation. The Attorney General shall have the same status as such members, director, or officer.
- (10)“to enjoin, void, or rescind any related party transaction, or seek additional damages or remedies”
- “take proof and issue subpoenas”

CONFLICTS OF INTEREST

- “A conflict of interest occurs where individuals’ obligation to further the organization’s charitable purposes is at odds with their own financial interests.”
- Charities Bureau-"any situation in which a director or officer’s personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity".
- IRS 990 – Reported in Part VI? Consistently enforced? Described Schedule O?

PEARSON CHARITABLE FOUNDATION- CLASSIC CONFLICT OF INTEREST CASE



PEARSON CHARITABLE FOUNDATION

12/13

- Relationship between for-profit Pearson Inc., developer of education products for common core curriculum
- Courses developed and paid for by the Foundation sold by Pearson, Inc.
- Internal business analyses at Pearson Inc. showed potential profits from sale of courses in tens of millions
- Charitable assets used for private benefit
- \$7.7 million to support teacher recruitment and training.

ALDON JAMES-NATIONAL ARTS CLUB PRESIDENT-CONFLICT OF INTEREST



NATIONAL ARTS CLUB AND ALDON JAMES- 7/13

- Improper removal of \$274,000 from restricted endowment for use unrelated to endowment
- Personal use of a dozen apartments, offices, and vacant space to store antiques purchased with club funds
- Required to repay \$950,000 to NAC
- Permanent bar from future service as officer or director of nonprofit

CORE CHARITY RULES

- Once assets are devoted to charitable purposes, they may not be diverted to private purposes unless there is a sale or transfer in which the charity receives fair market value and the assets received by the charity are held for similar charitable purposes.

THE NONPROFIT REVITALIZATION ACT(NPRA)

- 2012 Report to New York Attorney General
[http://www.ag.ny.gov/sites/default/files/NP%20Leadership%20Committee%20Report%20\(2-16-12\).pdf](http://www.ag.ny.gov/sites/default/files/NP%20Leadership%20Committee%20Report%20(2-16-12).pdf)
- Act passed by New York Legislature June 2013
- Act signed by New York Governor December 2013
- ACT effective date July 1, 2014
- Text of NPRA
http://www.charitiesnys.com/nonprofit_rev_act.jsp
- New York Charities Bureau Guidance on NPRA
http://www.charitiesnys.com/nonprofit_rev_act_guidance.jsp

NPRA-Reduction in Regulation

- Majority of directors or a majority of an authorized committee may authorize purchase, sale, mortgage, lease, exchange or other disposition of real property.
- Unless it is substantially all property
- Mergers, sales, dissolutions no longer require court approval in every case
- Email for meeting notices

THE GLIDE PATH



TEN THINGS TO KNOW ABOUT THE NPRA FOR NONPROFITS

- The “glide path”-full compliance may take some time; be prepared to show that your organization is aware of the statute and is making good faith, reasonable efforts to come into compliance

1) STATE/FEDERAL AGENCIES ARE PRIMARY FUNDER/REGULATOR FOR SERVICE PROVIDERS

- First obligation of provider Governing Body-
reasonable assurance that systems in place
will meet responsibilities to patients and
clients
- Governing Body must comply with existing law
in structuring its own operations
- All those clauses at back of grant and contract
awards

2) EVERY NONPROFIT MUST COMPLY WITH NOT-FOR-PROFIT CORPORATION LAW AND NPRA

- 1) Corporation filed with the Secretary of State (DOS-1511-f (no new filing required if previously filed)
- 2) Corporation registered with the AG Charities Bureau (CHAR 410) (no new filing required unless registration cancelled or suspended)
<http://www.charitiesnys.com/pdfs/char410.pdf>
- 3) Corporation timely files annual financial statements and IRS 990s with the Charities Bureau (CHAR 500)
<http://www.charitiesnys.com/pdfs/CHAR500-13-fillable.pdf>

3) OBLIGATIONS OF DIRECTORS UNDER NPRA

- Disclosure of **Conflicts of Interest** to the organization prior to election (and thereafter)
- Any director with an interest in a “related party transaction” must disclose in good faith the material facts of the interest to the board or authorized committee;
- No director with an interest in a related-party transaction (including compensation) may be present at or participate in deliberation or voting on it. (The board or committee may request that the person provide information or answer questions prior to the deliberations or voting).
- No director may involve themselves in related party transaction in which they have an interest (not just Board actions)
- **Compare with IRS 990:** Did the organization have a written conflict of interest policy? (Part VI, Section B)
- Compare with IRS 990: Did the organization regularly and consistently monitor and enforce compliance with the policy? If “Yes,” describe in Schedule O how this was done (Part VI, Section B)

4) Obligations of officers and “key employees” under NPRA

- No employee may serve as Chair or hold any other office with similar responsibilities
- No employee may serve on Audit Committee
- “Key employees” must disclose conflicts and interests in “related party transactions”
- Any officer, or key employee with an interest in a related party transaction must disclose in good faith the material facts of the interest to the board or authorized committee;
- No officer or employee with an interest in a related-party transaction may be present at or participate in deliberation or voting on it. (The board or committee may request that the person provide information or answer questions prior to the deliberations or voting).
- No officer or key employee may be present or participate in board deliberation or voting on their compensation.

5) STRUCTURE OF BOARDS UNDER NPRA

- Formal **conflict of interest policy** in bylaws consistent with statutory requirements
- Formal whistleblower policy consistent with requirements
- Independent Audit Committee (no member is employee of organization)
- Independent Chair
- Conflicts of interest or whistleblower deliberations and determinations must be made by a committee (such as an audit committee) or the board, consisting only of “independent directors”

6) Contents of the Conflict of Interest Policy

- The Conflict of Interest Policy, at a minimum, must include:
- (a) a definition of the circumstances that constitute a conflict of interest;
- (b) procedures for disclosing a conflict of interest to the Audit Committee, or if no Audit Committee exists, to the Board;
- (c) a requirement that the conflicted person not be present at or participate in Board or committee deliberations or vote on the matter;
- (d) a prohibition of any attempt by the conflicted person to influence improperly the deliberations or voting on the matter;
- (e) a requirement that the existence and resolution of the conflict be documented in organization records, including minutes of any meeting where the conflict is discussed or voted on; and
- (f) procedures for disclosing, addressing and documenting **related party transactions**

7) AUDIT COMMITTEE DUTIES (if revenue meets test)

- Oversee the accounting and financial reporting processes of the corporation and the audit of the corporation's financial statements;
- Annually retain an independent auditor to conduct the audit; and
- Review the results of the audit and any related management letter with the independent auditor.

8) WHY DO WE CARE ABOUT AUDITS AND OVERSIGHT OF AUDITS?

- Is there effective management?
- Internal controls and systems
- Fraud risk
- Governance
- Independent assessment
- Knowledge by Board and executives
- Reliance on information in 990s

9) Duties of Board (Conflicts Transactions)

- In any transaction involving a charitable nonprofit corporation and in which a “related party” has a “substantial financial interest” the board or an authorized committee of the board must:
- Prior to entering into the transaction, consider alternative transactions to the extent available;
- Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and
- **Contemporaneously document in writing the basis for the board or authorized committee’s approval, including its consideration of any alternative transactions.**
- **If the organization engages in a transaction in violation of these requirements, the Attorney General is empowered to unwind the transaction.**

10) DUTIES OF BOARD (CONFLICTS TRANSACTIONS)

- Person who will benefit from compensation decision may not be present at or otherwise participate in board or committee deliberation or vote
- Exception: board or committee may request information, background or response to questions prior to beginning deliberations or voting
- Covers compensation to directors, officers, employees
- IRS-990 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?

DUTIES OF BOARD MEMBERS

- Define mission
- Select and support executive director and review performance
- Assure organizational planning and adequate resources
- Approve annual budget
- Assure that organization has systems and controls to provide reasonable assurance of compliance with governing law

DUTIES OF BOARD MEMBERS

- Address theft and mismanagement
- Reporting obligations
- failure to identify and honor restricted funds
- know your bylaws and what they mean

Things You Must Do Going Forward to be eligible for NY State Grants AS A Not-For-Profit

- [Register with the Gateway](#)
- [Upload organizational documents](#)
- [Complete the Prequalification Application.
\(Not-for-Profits\)](#)
- [Sign the certification](#)
- [Be familiar with the master contract for grants](#)
- [http://www.grantsreform.ny.gov/sites/default/files/docs/nys master contract for grants 42913.pdf](http://www.grantsreform.ny.gov/sites/default/files/docs/nys_master_contract_for_grants_42913.pdf)

OTHER CHARITIES ISSUES

- Complaints to Charities Bureau
- Governance - Duties of Board Members, and Members of Organization
- Political Activities and Reporting

LOOK TO OUR WEBSITE FOR INFORMATION ON THE NPRA

- http://www.charitiesnys.com/nonprofit_rev_a_ct.jsp
- Thank you for your attention and the work you do.
- James G. Sheehan
- Chief, Charities Bureau

WANT TO CONTACT US?

- Email: charities.bureau@ag.ny.gov
- Complaints form
<http://www.charitiesnys.com/pdfs/char030.pdf>
- Fundraising questions:
charities.fundraising@ag.ny.gov