



# AVOIDING 'READY - FIRE - AIM' GOVERNANCE COMPLIANCE



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# TODAY'S GOVERNANCE COMPLIANCE TOPICS

- Basic Review of Tax Exempt Charitable 501 (c) (3) organizations
- Sarbanes Oxley
- Politics and Nonprofits don't Mix
- Meeting Board Effectiveness
- Operational Focus
- Board Strategically Focused
- Internals Controls
- ?Questions?



“I’m just waiting to see what you’re making,  
so I can write some regulations for it.”

**FIRST, SOME  
COMPLIANCE  
HUMOR...**



# BASIC REVIEW OF TAX EXEMPT CHARITABLE 501(C)(3) ORGANIZATIONS



# TAX EXEMPT ORGANIZATIONS

- Focus on 501(c)(3) Public Charities of the Internal Revenue Code.
- Federal tax law provides tax benefits to nonprofit organizations.
  - No corporate income tax
  - Tax deductible donations
- In return, the Code requires tax exempt organizations comply with federal tax law maintaining tax exempt status and avoid penalties.

# TAX EXEMPT ORGANIZATIONS

- Compliance activities potentially jeopardizing a public charities tax-exempt status:
  - Reporting Requirements
  - Record-keeping
  - Disclosure Requirements
  - Avoid Influencing legislation
  - Not operated for private purpose





# SARBANES OXLEY



# WHY IT IS GOOD TO BE COMPLIANT!

- Compliance - The Musical!

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10/19/202

# WHAT IS THE SARBANES- OXLEY (SOX) ACT OF 2002?

- The Sarbanes-Oxley Act of 2002 is a law the U.S. Congress passed on July 30 of that year to help protect investors from fraudulent financial reporting by corporations.
- Also known as the SOX Act of 2002 and the Corporate Responsibility Act of 2002, it mandated strict reforms to existing securities regulations and imposed tough new penalties on lawbreakers.
- The Sarbanes-Oxley Act of 2002 came in response to financial scandals in the early 2000s involving publicly traded companies such as Enron Corporation, Tyco International plc, and WorldCom. The high-profile frauds shook investor confidence in the trustworthiness of corporate financial statements and led many to demand an overhaul of decades-old regulatory standards.
- Even though only two SOX provisions apply specifically to not-for-profit organizations, the law is still very important to these organizations. That's because the Sarbanes-Oxley Act has fast become the standard by which the governance of any organization is judged.

# **SOX RECOMMENDED ACTIONS FOR NONPROFITS**

## **Audit Committee:**

- The law states that members of a corporate audit committee must be independent of management and that the company must strive to include at least one "financial expert" on the audit committee. To comply with the spirit of the law, not-for-profit organizations should take steps to ensure that:
  - Audit committee members are not on the management team and are not compensated as consultants or for other professional services.
  - Board members serving on the audit committee have the financial expertise to understand financial statements, evaluate bids from auditing companies and make sound financial decisions.

**SOX**  
**RECOMMENDED**  
**ACTIONS FOR**  
**NONPROFITS**  
**CONT'D**

**Relationship with Auditors:**

- The law requires that for-profit companies take steps to put some distance between their corporation and its auditors. To comply with the spirit of the law, not-for-profit organizations should consider:
  - Changing auditors every five years.
  - Preventing auditing firms from providing non-auditing services.

**SOX**  
**RECOMMENDED**  
**ACTIONS FOR**  
**NONPROFITS**  
**CONT'D**

**Veracity of Financial Statements:**

- The law requires that the chief executive and chief financial officers of for-profit corporations certify that financial statements fairly represent the financial condition and operations of the company. To comply with the spirit of the law, not-for-profit organizations should:
  - Examine their financial systems, policies and reporting to improve the accuracy and completeness of their financial documents, including the IRS Form 990.
  - Ensure that the chief executive officer (CEO) exercises good stewardship of the organization's resources.
  - Compensate for a CEO's lack of financial prowess by hiring a skillful financial officer.

# SOX RECOMMENDED ACTIONS FOR NONPROFITS CONT'D

## Disclosure:

- The law requires that for-profit companies disclose information about material changes in the operations or financial situation of the company. Not-for-profit organizations do not file most of the reports that publicly traded companies are required to file. **However, they should:**
- Provide their donors, clients, public officials, the media and others with an accurate picture of their financial condition.
- Ensure the accuracy of IRS Form 990.

**I DON'T CARE WHO YOU ARE, OR HOW  
BAD OUR VENDOR RISK ASSESSMENT IS**



**I WILL FIND YOU,  
AND I WILL AUDIT YOU.**



# SOX REQUIRED ACTIONS FOR NONPROFITS

## Whistleblowers:

- The law says that no company - whether it is for-profit or not-for-profit - can take action in retaliation against individuals who report suspected illegal activities within the organization. To comply with the law, **not-for-profit organizations must:**
- Protect themselves by eliminating careless and irresponsible accounting practices, conducting an internal audit aimed at uncovering weaknesses, and instituting procedures to avoid fraud and abuse.
- Adopt written policies covering any unethical behavior within the organization.
- Establish procedures for handling employee and volunteer complaints.

# SOX REQUIRED ACTIONS FOR NONPROFITS CONT'D

## Document retention:

- The law makes it a crime for any organization - for-profit and not-for-profit alike - to alter, cover up, falsify or destroy any document to prevent its use in an official proceeding. **Not-for-profit organizations must:**
  - Maintain appropriate records about their operations.
  - Archive financial records, significant contracts, records of real estate and other major transactions, employment files and fundraising obligations.
- Google search 'Nonprofit Record Retention Policy and Schedules' will provide you many options in creating a policy and schedule.
- CSUSA Record Retention Policy

# SOX REQUIRED ACTIONS FOR NONPROFITS CONT'D

## Document retention for Crime Stoppers Tips:

- Perhaps the most frequently asked question is: “How long must we retain records of communications from anonymous tipsters? The following suggestions may help answer such questions:
  - If the tip appears to be absolutely worthless in the eyes of trained tip handlers and criminal investigators, it can be destroyed (in accordance with the retention policy).
  - In homicide and other cases where there is no “Statute of Limitations” tips should be kept indefinitely if the case has not been solved.
  - In other criminal cases, tips on unsolved cases should be kept until the statute of limitations has expired.

# SOX REQUIRED ACTIONS FOR NONPROFITS CONT'D

## Document retention for Crime Stoppers Tips:

- When a tip to Crime Stoppers has solved a case, an arrest has been made, caution should be given to destruction or purging of Crime Stoppers records. There are two (2) primary concerns:
  - 1. Has the case reached a final disposition with no pending appeals? If the prosecuting attorneys have been given everything needed to prosecute the case, and no additional evidence is needed, there is normally no need for Crime Stoppers to retain the records. However, if there is a post-conviction appeal it is possible Crime Stoppers records could become relevant.
  - 2. Did the Court trying the criminal or civil case issue any continuing orders compelling Crime Stoppers to preserve relevant records? If there has been a court order to preserve Crime Stoppers records, the Court Order must be obeyed, unless your attorney is successful in having a subpoena or motion to compel quashed. It is possible for collateral civil litigation or criminal investigation to run parallel to the criminal prosecution that resulted from the Crime Stoppers tip.

## BEST PRACTICES RECOMMENDED ACTIONS

### Conflict of Interest

- How many have a Conflict of Interest policy?
- Make sure you aren't potentially putting your organization at risk, dust off your current conflict-of-interest policy.
- Why is this so important?
  - While conflicts of interest are sometimes unavoidable, undisclosed conflicts can erode the public trust. Why? **Because providing oversight is a key board responsibility.**
- Best practices recommends all nonprofits have a conflict of interest policy.
- The IRS has an easy-to-follow conflict-of-interest policy outline following a traditional legal format and is recommended by the IRS. Part V, Section 5 of IRS Form 1023 asks questions to determine if the organization has procedures for handling conflicts and makes recommendations on creating a conflict-of-interest policy if one does not exist.

## **BEST PRACTICES RECOMMENDED ACTIONS**

### **What is in your conflict of Interest policy?**

- Do all of your board members sign a conflict-of-interest disclosure statement each year?
- Do board members regularly disclose new possible conflicts on a regular basis?
- Does your conflict-of-interest policy include the board's process for dealing with conflict?
- If a conflict arises, should the board member in question leave the room?
- Does it clarify the consequences for violating the policy?

### **Examples of a Conflict of Interest**

# POLITICS AND NONPROFITS.... DON'T MIX



# POLITICAL CAMPAIGN INTERVENTION

- Public Charities absolutely prohibited from directly or indirectly participating, or intervening in, any political campaign on behalf of (or in opposition to) a candidate for public office.
- Contributions to political campaign or public statements of position made on behalf of the organization to any candidate for public office violates the prohibition against campaign activity.



# POLITICAL CAMPAIGN INTERVENTION

- Certain activities are allowable, depending on the facts.  
Examples:
  - Certain voter education activities and public forums in a nonpartisan manner.
  - Activities intended to encourage people to participate in electoral process, such as get out the vote, if conducted in a nonpartisan manner.
- Education or registration activities with evidence of bias will constitute campaign intervention.

# POLITICAL CAMPAIGN INTERVENTION

- Not intended to restrict free expression of individuals on political matters.
- Leaders and organizations cannot make partisan comments in their official organizational capacity.
- Care should be taken on public policy, however, must avoid any issue advocacy that functions as a political campaign intervention which would lead bias to a particular candidate.

# POLITICAL CAMPAIGN INTERVENTION

- Political Candidates may be invited to appear or speak at organization events.
  - Need to provide equal opportunity to all candidates seeking same office.
  - No bias to one candidate or another can be shown.
  - No political fundraising should occur.
- Additional Information can be found in Revenue Ruling 2007-41.

# IRS PERSPECTIVE

- To determine whether or not any 501 (c) (3) activity indicates support for or opposition to a candidate, the IRS examines all the relevant "facts and circumstances," including not only the 501 (c) (3)'s communication or activity but also the context of that communication or activity.
- Over the years, the IRS has provided guidance that highlights some of the factors that the agency finds particularly important in evaluating whether a particular activity is impermissible electioneering:

# PERMISSABLE

- A 501(c)(3)'s public communication or activity is more likely to be seen by the IRS as a permissible communication or activity if the communication or activity....
  - does not refer to a candidate, the election, or voting
  - describes the candidates' positions on a broad range of issues
  - is motivated by non-campaign events beyond the control of the organization (e.g., an imminent legislative vote)
  - is similar to previous non-electoral communications or activities by the 501(c)(3)

# IMPERMISSIBLE

- *A 501(c)(3)'s public communication or activity is more likely to be seen by the IRS as impermissible political campaign intervention if the communication or activity....*
  - is deliberately timed to coincide with the election
  - focuses on a "wedge issue" that divides the candidates
  - is targeted to an audience selected for its relevance to the election (e.g., likely Democratic supporters)
  - compares the 501(c)(3)'s preferred policy position to the position of a candidate or multiple candidates (including rating or scoring the candidates' positions)
  - is done at the request or suggestion of a political candidate, campaign, or party

# LEGISLATIVE (LOBBYING) ACTIVITIES

- Public Charity is not permitted to engage in substantial legislative activity, or more commonly referred to as lobbying.
- Considered lobbying if organization attempts to influence legislation by contacting or urging the public to contact, members or employees of a legislative body for the purposes of proposing, supporting or opposing legislation.

# LEGISLATIVE ACTIVITIES

- If lobbying activities are substantial, public charity may fail the operational test and risk losing its tax-exempt status and/or be liable for excise taxes.
- Substantiality is measured by substantial part test or expenditure test.
  - Substantiality Part Test based on all pertinent facts and circumstances including time and expenditures devoted towards lobbying.



# LEGISLATIVE ACTIVITIES

- Expenditure test calculated by filing Form 5768, Election/Revocation of by an Eligible Section 501 (c) (3) Organization.
  - Under Expenditure test, lobbying activity will not jeopardize tax-exempt status provided expenditures exceed Section 4911 of the IRS Code, and based on the size of the organization.
  - Excessive lobbying activity over a four-year period of time may lose its tax-exempt status making all income during that period subject to tax.

# CREATING AN EFFECTIVE BOARD - VISION & ENGAGEMENT



# BOARD EFFECTIVENESS – CLEAR VISION, ENGAGED BOARD

- Organization is well-managed, clear mission policy and goals
- Organization has capable leadership and an engaged board
- Organization has a positive profile within the community

# INDICATORS OF GOOD GOVERNANCE

- Board is actively engaged in its oversight and knowledgeable about key issues
- Board focuses on policy development, strategic direction and evaluation of organization
- Board has established clear leadership roles driving the organization forward
- Board understands fiduciary and legal responsibilities and manages the organizations risk exposure

# QUESTIONS FOR THE BOARD TO ASK...

- Does the board regularly appraise its own performance?
- Does Board evaluate performance of Executive Director, if applicable?
- Does Board set the Executive Directors compensation?
- Has board established a succession plan for Executive Director and board/leadership recruitment?

# OPERATIONALLY FOCUSED



# BOARD OPERATIONS – A WELL-TUNED MACHINE

- Board meets regularly addressing matters of policy, strategic direction, organizational performance and community impact
- Board receives financial and relevant information in advance of board meeting to allow adequate time to review and prepare

# INDICATORS OF GOOD GOVERNANCE

- Board meets regularly throughout the year with a quorum present
- Minutes of board meetings maintained, reviewed and approved
- New board members receive appropriate orientation after election to board
- Ongoing training provided regularly
- Board maintains active involvement to rotation of duties and/or term limits
- Committee structure reflects organizational strategic priorities with committee's meeting regularly and reporting to board structure



# INDICATORS OF GOOD GOVERNANCE – CONT'D

- Board understands its legal obligations
- Conflict of Interest policy is reviewed periodically and signed annually by board members
- Board is aware of federal, state and local obligations

# QUESTIONS FOR THE BOARD TO ASK...

- How often does the board meet?
- Does the board have appropriate for development, recruitment, orientation training in place?
- Have terms been set for officers of the board?
- Does Board conduct annual or periodic self-evaluations?
- Is there a functioning committee structure within the organization?
- Are Board members aware of their legal responsibilities to the organization?
- Are terms for officers of the board enforced?
- Does organization have directors and officers liability insurance?

# SETTING ORGANIZATIONAL DIRECTION



# STRATEGIC PLANNING – SO YOU KNOW YOUR DIRECTION

- Board uphold organizations mission and can articulate a clear vision for its future and values
- Board is integrally involved in setting strategic direction to strategic planning, organizational alignment and implementation

# INDICATORS OF GOOD GOVERNANCE

- Organization has an approved strategic plan with attainable goals
- Plan is a living and working document updated periodically adjusting for progress or critical opportunities
- Board members are knowledgeable about program goals, outcomes an organization needs while assisting with or participating in organizational events
- Board members are able to articulate the shared vision for the future of the organization

# QUESTIONS FOR THE BOARD TO ASK...

- Does organization have current strategic plan charting program and operational direction for the organization supporting the vision?
- How does the organization monitor progress of the plan?
- How does Board respond to changing circumstances?



# DON'T DISREGARD INTERNAL CONTROLS

# INTERNAL CONTROLS FOR NONPROFITS

- “Internal controls” are financial management practices that are systematically used to prevent misuse and misappropriation of assets, such as occur through theft or embezzlement.
- Internal controls are generally described in written policies that set forth the procedures that the nonprofit will follow, as well as who is responsible.
- The goal of internal controls is to create business practices that serve as “checks and balances” on staff (and sometimes board members) and/or outside vendors, in order to reduce the risk of misappropriation of funds/assets.



# INTERNAL CONTROLS FOR NONPROFITS

## Examples of Internal Controls

- Segregation of Duties
- Two signatures on checks
- Background checks on those handling money
- Obtain a fiduciary/Crime Bond
- Conduct an annual Audit/Review/Internal financial analysis
- Develop organizational checklists; who is responsible for what and when
- Document destruction policy
- Conflict of interest



## PRC Crime Stoppers board member arrested for embezzlement

Published 10:07 am Tuesday, January 12, 2021

The former secretary and treasurer of Pearl River County Crime Stoppers, an organization that provided community members with a way to report crimes anonymously, has been arrested for embezzlement of more than \$50,000 from the organization.


According to a press release from State Auditor Shad White, Michelle McBride, the former secretary and treasurer of Pearl River County Crime Stoppers, was arrested after she was indicted on the offense of embezzling \$52,000. She after turned herself in to the Pearl River County Sheriff's Department on Jan. 8, said Logan Reeves, media relations for White's office.

The investigation showed that McBride allegedly used the local Crime Stoppers' debit card to fund personal rodeo expenses and transfer funds to "fraudulent non profit accounts she owned," the release states. Reeves said he could not elaborate on the nature of the alleged theft of funds.

After her arrest, she was issued a \$20,000 bond and if convicted she could be convicted to up to 25 years in prison and up to \$15,000 in fines, the release states.

Since a surety bond did not cover McBride's duties on the board of Pearl River County Crime Stoppers, which protect tax payers from cases like this, she will be responsible for paying back those missing funds along with any other expenses incurred in the case.

# COMPLIANCE OFFICER

kom-ply-yance off-fi-cer 

noun

noun: compliance officer;

plural noun: compliance officers;

1. Someone who solves problems you never knew existed in ways that will blow your mind;
2. Also see, wizard; legend; miracle worker



"We've considered every potential risk except the risks of avoiding all risks."

**? QUESTIONS ?**

# TODAY'S GOVERNANCE COMPLIANCE TOPICS

## Did we meet our objectives?

- Basic Review of Tax Exempt Charitable 501 (c) (3) organizations
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**THANK YOU!**

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*KSA HAPPY PRODUCTIONS*