

# Application of the Nonprofit Revitalization Act The NRA for CPA's

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# Focus:

- To bring Nonprofit Revitalization Act (the “Act”) down to a practical level
  - The applicability of this new piece of legislation extends beyond the actual text of the law;
  - Nonprofits will have to understand how to apply the law and its ripple affects
  - Some items were incorporated within the CPA’s responsibilities, the NRA will now hold nonprofits accountable for various items.

## POINTS TO CONSIDER

- The applications of the law will vary based on several criteria, primarily, levels of revenue and the number of employees
- Nonprofits Vs. Outside professionals - The law is directed towards the nonprofit itself, therefore, implementation of its requirements are incumbent on the nonprofit. (some items were recommended by outside professionals)
- Varying effective dates

## APPLICABILITY TO FOREIGN ENTITIES:

➤ The law applies to entities incorporated in NYS as well as those incorporated outside of NYS if:

☐ operate

☐ or solicit charitable contributions in NYS

➤ Incorporated in Delaware

# AUDIT & REVIEW THRESHOLDS:

	<b>Annual Accountants' Report Requirements</b>		
<b>Effective Dates</b>	No accountants report required - Submit Unaudited report	CPA Review Report	CPA Audit Report
<b>Until June 30, 2014</b>	\$0 - \$100,000	\$100,001 - \$250,000	More than \$250,000
<b>July 1, 2014</b>	\$0 - \$250,000	\$250,001 - \$500,000	More than \$500,000
<b>July 1, 2017</b>	\$0 - \$250,000	\$250,001 - \$750,000	More than \$750,000
<b>July 1, 2021</b>	\$0 - \$250,000	\$250,001 - \$1,000,000	More than \$1,000,000

# Compensation

- 990 Part VI question 15 – process for determining compensation of the following person's include a review and approval by independent persons, comparability data, and contemporaneous substantiation for the organization's CEO, Executive Director, or top management official, other officers or key employees of the organization
- Schedule J question 3 – was there an approval by the Board or compensation committee – assess independence
- Approving directors compensation - Individuals voting on compensations cannot be related to those affected by those decisions.
  - Related parties
  - 3 Board members – paid executive may no longer be chair of the Board

# GOVERNANCE

- 990 Part VI questions 12 and 13 - Whistleblower and Conflict of interest policies
  - ☐ IRS just asks but does not require - NYS requires, check the box
  - ☐ Working on schedule O? should be carefully written to not contradict requirements of the NYS law
  - ☐ The law proposes specific wording - flexibility if the organizations policy is similar

# Governance – Conflict of Interest

- a) Thresholds for applications – There are no thresholds to this requirement
- b) Who should be in charge of sending and collecting the signed forms – currently the secretary of the Board is required to manage this process. Advocacy for allowing this process to be performed by any designated individual
- c) Is the wording adequate to meet the standards of the law – the wording should include several key items
- d) Retaining the signatures on file and implementing the limitations on the organization



# Governance – Whistleblower policy

## ➤ Thresholds for application

- ✓ Not-for-Profit Corporations and Wholly Charitable Trusts with 20 or More Employees and Annual Revenue (in the prior fiscal year) in Excess of \$1,000,000
- ✓ Board or Audit Committee
- ✓ Question – what constitutes a ‘good faith’ complaint that would be covered by the law, this can be far-reaching
  - ❖ Coverage for ill-intended complaints

# Corporate by-Laws

Corporate by-Laws should be revisited to ensure it covers the New York State NRA laws – The by-laws should reflect the new laws respective items some of which include:

- a) Board committees
- b) Electronic communications
- c) Related party transactions
- d) Audit oversight
- e) Article 7-A revised reporting requirements
- f) Voting requirements

# BOARD COMMITTEE'S

- ✓ Board Committees vs. Organizational Committees
- ✓ Comprised of Board members
- ✓ Appointed by Board members
- ✓ What are their powers to act on behalf of the Board?
- ✓ What legal requirements are there for taking minutes?

# Electronic Communications

Electronic communications - What you need to know

- ❑ Annual reports to the AG's office
- ❑ Other requested documents from the AG's office
- ❑ Invitations to Board or Committee meetings
- ❑ Participation in Board meetings via video screen as it relates to propositions, vote in favor/object etc.

# Conflicts of Interest - Related Party Transactions

- Inappropriate Transactions – broadly defined as related party transactions and other forms of conflicts of interest
- NYS Law:
  - AG has the power to rescind a transaction it deems inappropriate
  - Seek restitution including penalties up to double the transaction amount
  - Remove Board members

# Related Party - Definitions

- Related party – A director, officer, trustee, or key employee of the corporation or an affiliate of the corporation, relatives of such persons, or an entity in which such person or relative has a 35% or greater ownership or beneficial interest, or, if the entity is a partnership, a direct or indirect ownership exceeding 5%
- Relative - is defined as a person's spouse, ancestors, brothers, sisters (whether whole or half-blood) children (whether adopted or natural) grandchildren, great-grandchildren and spouses of brothers, sisters, children, grandchildren and great-grandchildren.
- Related party transaction – A transaction, agreement, or other arrangement in which a related party has a financial interest and in which the corporation or trust or any affiliate of the corporation or trust is a participant

# Conflicts of Interest - Related Party Transactions

Related party transactions:

- ✓ Senates' deliberations whether they should be banned completely
- ✓ Fairness
- ✓ Disclosure
- ✓ Consider alternatives
- ✓ Documentation

# Attorney General - Increased Power

- The Attorney General may now, on its own initiative, bring an action against any corporation which:
  - Has not obtained or submitted the required consent or notice to the AG's office to solicit or perform other tasks
  - Which has not complied with the Article 7 and EPTL Article 8 registration requirements

(formerly the Attorney General could bring an action at the request of the officer or agency authorized to grant the approval required under Section 404,)



# Board of Directors

## ➤ Composition - Independent Directors

- Minimum of 3

## ➤ Independence requirements:

Cannot have:

- ✓ Been an employee in the last 3 years
- ✓ Received more than 10k in compensation in last 3 years
- ✓ Been employed or have financial interest in any vendor or received payments (not including donations) whose transactional value exceeds \$25,000 or 2% of gross revenue
- ✓ No relatives within the framework of items listed above

# Board of Directors

- Chair or similar title cannot be held by an employee
- Board members - By-laws vs. 990's
- Decisions requiring full board, 2/3's of the Board or majority of the Board are counted based on the number of members entitled to vote whether or not there are vacancies (fully loaded boards in accordance with the by-laws)
- Board committee – Board members

# Board of Directors

- Willful failure to register to submit required reports (Article 7A and EPTL) constitutes:
  - A breach of the Directors duty to the Corporation and,
  - Allows the AG to dissolve the corporation

Common scenario's.....

## Board/Committee - Key Responsibilities

### Board or Audit Committee:

Annual revenue between \$500,000 and \$1,000,000

Job # 1 – Oversee Accounting and financial reporting process

- Must report to the Board – CPA's should see this in the Board minutes during their audit

Job # 2 – Oversee the Audit of the Financial Statements

## Board/Committee - Key Responsibilities

Job # 3 – Annually retain or renew the retention of a new auditor to conduct the audit

Job # 4 – Review the results of the audit

Job # 5 – Conduct a review of the management letter from the auditors

## Job #5 Cont.

- Communication from auditors to Organization
- Deficiency in internal control ..... exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.
- A material weakness
- A significant deficiency

## Revenue in excess of \$1 Million Additional responsibilities

Board or Audit Committee:  
Annual revenue in excess of \$1,000,000

Job # 6 – Review with the independent auditors the scope and planning of the audit prior to the audit commencement

Job # 7 – Upon completion of the audit

- Six areas for Audit committee to cover
  - ❖ Including internal controls, scope, adequacy of fiscal processes

Job # 8 - Annually consider the performance and independence of the Auditors

Job # 9 – Oversee the adoption of a conflict of interest policy (unless this is overseen by other independent directors)

Job # 10 – Oversee adoption of a whistleblower policy (unless this is overseen by other independent directors)



# QUESTIONS