



July 1, 2013

Nonprofit Revitalization Act

On June 21, 2013, the New York State legislature passed the Nonprofit Revitalization Act of 2013 (the "Act"). Once enacted, the effective date will be July 1, 2014, except for a few provisions with later effective dates.

The full text of the act may be found here: <http://open.nysenate.gov/legislation/bill/S5845-2013>

The purpose of the Act is to improve oversight and governance accountability, and reduce administrative burdens on nonprofit organizations. Several of the key changes are to now require by law certain best practices that have already been implemented by many organizations. The attached chart summarizes changes regarding:

- Revisions to financial statement audit and review thresholds
- Audit Committee or Board oversight of the accounting and financial reporting processes
- Related Party Transactions
- Conflict of Interest Policy
- Whistleblower Policy
- Approval of real estate transactions

Other changes included in the Act include:

- Definition of Fund Raising Counsel ("FRC") – an individual grant writer retained as a consultant solely to draft solicitations for funding from a governmental agency or another 501(c)(3) organization is no longer considered a FRC.
- Categories of corporations – establishes two categories of corporations, charitable and non-charitable, rather than the four types previously defined under the law. Existing Type A corporations are generally considered non-charitable, and Types B, C and D corporations are generally charitable.
- Compensation paid to an officer or director for services rendered – any person who may benefit from such compensation may not participate in the deliberation or vote concerning such person's compensation
- Dissolution and distribution of assets – grants authority to the Attorney General to approve plans of dissolution

In addition, a bill known as the Executive Compensation Reform Act was also introduced into the legislature in May 2013 at the same time as the Nonprofit Revitalization Act. While not yet passed by the legislature, the attached summary includes the key provisions of the Executive Compensation Reform Act. Organizations should be aware of and consider planning for these pending changes to the law. The Executive Compensation Act may be found here: <http://open.nysenate.gov/legislation/bill/S5197-2013>

Please contact our office with any questions, to discuss how this legislation specifically affects your organization, and what actions may be appropriate for your organization.

**Nonprofit Revitalization Act of 2013
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Audit or Review of Financial Statements of Charitable organizations that solicit contributions in New York	Annual report with financial statement reviewed by independent accountants	Required for organizations with gross revenue and support of \$250,000 to \$500,000 (increased from \$100,000 to \$250,000)
		Upon review of filing, Attorney General may still require an audit
	Annual report with financial statement audited by independent accountants	Required for organizations with gross revenue and support in excess of \$500,000 (increased from \$250,000)
		Threshold increases to \$750,000 as of July 1, 2017 Threshold increases to \$1,000,000 as of July 1, 2021
Audit Committee or Board Oversight of Accounting and Financial Reporting Processes	All Organizations required to have an audit	Board, or designated Audit Committee of the Board comprised solely of independent directors, shall:
		- oversee the accounting and financial reporting processes and the audit of the financial statements
		- annually retain or renew the retention of the independent auditor
		- review the completed audit, and any related management letter, with the independent auditor
	Organizations with annual revenue in excess of \$1,000,000	Board, or designated Audit Committee of the Board comprised solely of independent directors, shall:
		- review the scope and planning of the audit with the auditor prior to its commencement
- upon completion of the audit, review any material risks and weaknesses identified during the audit, any restrictions on the auditor's activities or access to required information, any disagreements with management, and the adequacy of accounting and financial reporting processes		
- annually consider the performance and independence of the auditor		
	- oversee the adoption, implementation, and compliance with Conflict of Interest and Whistleblower policies, unless overseen by another committee of the board	

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Related Party Transactions	All charitable and non-charitable organizations	Transactions with related parties must be determined by the Board to be fair, reasonable and in the organization's best interest Related party must disclose all material facts concerning interest in transaction
	All charitable organizations	Board or authorized committee, must: - consider alternative transactions - approve the transactions with not less than a majority vote - contemporaneously document in writing the basis for the approval of the transaction, and consideration of alternatives
Conflict of Interest Policy	All organizations	Must adopt a conflict of interest policy including provisions that: - define the circumstances that constitute a conflict of interest - outline procedures for disclosing a conflict to the Audit Committee or to the Board - require that the person with the conflict of interest not participate in the deliberation or vote on the proposed transaction - prohibits attempts by the person with the potential conflict to influence the deliberation or voting on the matter - requires the existence and resolution of the conflict be documented in the minutes of the meetings in which the transaction was discussed or voted on - requires a conflict of interest disclosure statement be completed annually, and prior to initial election of a director - requires that all disclosure statements be submitted to the chair of the audit Committee, or chair of the Board
Whistleblower Policy	Organizations with 20 or more employees and annual revenue in excess of \$1,000,000	Must adopt a whistleblower policy that: - provides that no one who reports an action or suspected action shall suffer retaliation or adverse consequences - includes procedures for reporting violations or suspected violations - designates an employee, officer or director to administer the policy - requires that the policy be distributed to all directors, officers, employees and volunteers who provide substantial services

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Real Estate Transactions	Purchase, sale, mortgage, lease, exchange or disposal of real property	Must be approved by 2/3 of the board (or majority if more than 21 directors) if property constitutes all or substantially all of the assets of the corporation
		Majority of board, or committee of the board, required for routine transactions NOT involving all or substantially all of the assets of the corporation
	Sale of all or substantially all of the assets of a corporation	Simplified one step approval process established

**Proposed Executive Compensation Reform Act
 NOT YET ENACTED**

Process for Determining and Approving Executive Compensation	All organizations	Compensation to all employees must be fair, reasonable and commensurate with services performed
		Board or designated compensation committee comprised solely of independent directors shall review and approve compensation paid to the principal executive officer
	Organizations registered to solicit contributions with annual revenue in excess of \$2,000,000	Must have board or designated compensation committee which shall:
		- review the compensation paid to the top five highest compensated employees who are officers or key employees and whose compensation exceeds \$150,000
		- consider relevant data on compensation paid to similar positions of organization of similar size, type, purposes and scope, the employee's qualifications and performance, and the financial condition of the organization, in determining that compensation paid is fair, reasonable and commensurate with services performed
		- maintain contemporaneous written records describing the basis for its determination
		- approve by not less than a majority vote the total compensation paid to each such employee
		Review and approval must occur whenever the term of employment is renewed or extended, or whenever compensation is materially changed
		Must review the independence and qualifications of, and approve and oversee, any compensation consultants retained