



Nonprofit Executive Breakfast Seminar

City Club of Washington

February 21, 2008

Welcome



- Sponsors
 - Argy, Wiltse & Robinson, P.C.
 - Alliance Bank of Virginia
 - Drohan Management Group
- Panelists
 - Francie Ostrower, Ph.D. – Urban Institute
 - Jeff Schragg, Partner - Argy, Wiltse & Robinson, P.C.
 - Jonathan L. Pompan, Esq - Venable, LLP
 - Doug Haskett II, Sr. Vice President - Alliance Bank

Seminar Agenda

- 8:00 am Welcome
- 8:05 am Board Governance
 - Urban Institute Study Results
 - Discussion of Current Environment
- 9:00 am Questions for Panelists
- 9:30 am Adjourn

Nonprofit Governance Study Results and Current Governance Insights



Urban Institute *National Survey of Nonprofit Governance*

- Study background
 - Number and types of nonprofits included, etc
- Survey topics and purpose

Nonprofits and policy developments: Sarbanes-Oxley related practices

- Growing interest/scrutiny of nonprofit boards
- Factors that promote/inhibit adoption of Sarbanes-Oxley type practices by nonprofit boards

Nonprofit Governance Study Results and Current Governance Insights



Engagement in traditional stewardship responsibilities

- Levels of board activity in traditional responsibilities
- Factors that promote/inhibit board engagement

Implications

The report, *Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study* by Francie Ostrower, Washington, DC: The Urban Institute. 2007 is available on the Urban Institute website at:

<http://www.urban.org/publications/411479.html>

How We Got Here...

- **Sarbanes Oxley (2002)**
- **Senate Finance Committee Staff Paper (2004)**
- **IRS Voluntary Best Practices (2005)**
- **H.R. 4 – New Section 501(q) for Credit Counseling Agencies and other Changes**
- **IRS Model Good Governance Practices (Feb. 2007)**
- **American National Red Cross – Senate Bill 655**
- **Smithsonian Institution – push to ethics and accountability reforms (March 2007)**
- **National Association of Manufacturers (Lobbyist Leaves for CPSC, May 2007)**
- **New IRS Form 990**

Duty of Care

- **Informed, good faith decisions**
- **Regular attendance at board and committee meetings**
- **Can rely on reports and consultants, if reliable**
- **Delegation is permissible**
- **Monitor investments**

Duty of Loyalty

- **Undivided allegiance**
- **Act in best interests of the organization**
- **Disclosure of conflicts/Conflict of Interest Policy**
- **Intermediate Sanctions**

Understanding the New IRS Form 990

- Core Form (11 pages)
- Part VI, “Statements Regarding Governance, Management and Financial Reporting.”
- Compensation (5 highest employee salaries)
- 5 yrs public support test (increased from 4yrs)
- **Executive Compensation**
- **Approval of Executive Compensation**
- **Organizational Governance**
- **And More....**

Part VI Governance, Management, and Disclosure (Sections A, B, and C request information about policies not required by the Internal Revenue Code.)



Section A. Governing Body and Management

		Yes	No
<i>For each "Yes" response to lines 2-7 below, and for a "No" response to lines 8 or 9b below, describe the circumstances, process, or changes in Schedule O. See instructions.</i>			
1a	Enter the number of voting members of the governing body		
1b	Enter the number of voting members that are independent		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?		
4	Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed?		
5	Did the organization become aware during the year of a material diversion of the organization's assets?		
6	Does the organization have members or stockholders?		
7a	Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body?		
7b	Are any decisions of the governing body subject to approval by members, stockholders, or other persons?		
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
8a	a the governing body?		
8b	b each committee with authority to act on behalf of the governing body?		
9a	Does the organization have local chapters, branches, or affiliates?		
9b	b If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization?		
10	Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990		
11	Is there any officer, director or trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O		

Section B. Policies

		Yes	No
12a	Does the organization have a written conflict of interest policy? If "Yes":		
12b	b Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?		
12c	c Does the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this is done		
13	Does the organization have a written whistleblower policy?		
14	Does the organization have a written document retention and destruction policy?		
15	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:		
15a	a The organization's CEO, Executive Director, or top management official?		
15b	b Other officers or key employees of the organization? Describe the process in Schedule O.		
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		
16b	b If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable Federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements?		

Section C. Disclosure

- 17** List the States with which a copy of this Form 990 is required to be filed.
- 18** IRC Section 6104 requires an organization to make its Form 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply.
 own website another's website upon request
- 19** Describe in Schedule O whether (and if so, how) the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.
- 20** State the name, physical address, and telephone number of the person who possesses the books and records of the organization:



Election of Sarbanes-Oxley Provisions by Nonprofit Entities

Steps of Implementation

- Risk Assessment
 - Financial Risk
 - Operational Risk
 - Identification of Risk
 - Documentation of Risk
- Addressing Risk- Building and documenting controls
- Validation of controls through independent testing

Election of Sarbanes-Oxley Provisions by Nonprofit Entities

Factors Leading to Implementation:

- Trustee/Board Member experience at public companies
- High profile fraud cases in Non Profit Industry
- Report from Certified Fraud Examiners in 2006
 - Non Profit Entities Account for 14% of Fraud Cases
 - Median Loss of \$100,000
- Identification of fraud
 - 60% of cases detected by accident or employee tips
 - 20% detected by internal controls
 - 15% detected by external audit
 - Even with these statistics, only 1 in 5 non profits that were victimized had a fraud/whistle blower hotline
- Large contributors have desire to know that resources will be not be redirected or embezzled.
- Perception that it will one day be required by IRS for tax exempt status or state law.

Election of Sarbanes-Oxley Provisions by Nonprofit Entities



Inside the organization- What will it achieve?

- A much better big picture of the organization through:
 - Creation of a framework of financial reporting and resource controls;
 - Increased awareness of risk by Managers and Directors;
 - Improved accountability for control; and
 - Better allocation of human resources to achieve mission objectives.

Key Characteristics of a “Good” Charity

- Board Effectiveness
- Staff Effectiveness
- Strategic Plan
- Fundraising Plan
- Effective Fiscal Management and Reporting
- Entrepreneurial Spirit



Questions for Panelists

Jeff Schragg, Partner - Argy, Wiltse & Robinson, P.C.

Jonathan L. Pompan, Esq - Venable, LLP

Francie Ostrower, Ph.D. – Urban Institute

Doug Haskett II - Sr. Vice President, Alliance Bank

