

**PRESENTED AT**

**2019 Nonprofit Organizations Workshop and Institute  
January 16, 17-18, 2019  
Austin, Texas**

**“Smart Business and Board Governance Strategies to  
Successfully Prepare for and Defend a Tax-Exempt Nonprofit  
Executive Compensation Review/Audit”**

**Doing Business with and Compensating Insiders: Strategies for Success &  
Intermediate Sanctions Compliance Presentation**

**Bob Cartwright, SPHR/SHRM-SCP  
Edward T. Chaney**

Bob Cartwright, SPHR/SHRM-SCP  
President / CEO  
Intelligent Compensation, LLC  
Austin, TX  
[bob.cartwright@intelligentcomp.net](mailto:bob.cartwright@intelligentcomp.net)  
512.415.8080

Edward T. Chaney, Member  
Schell Bray, PLLC  
Chapel Hill, NC  
[EChaney@schellbray.com](mailto:EChaney@schellbray.com)  
919.869.3080

# **“Smart Business and Board Governance Strategies to Successfully Prepare for and Defend a Tax-Exempt Nonprofit Executive Compensation Review/Audit”**

The stakes are higher today than they have ever been before regarding executive compensation and the scrutiny imposed by the federal and state governments and the national news media. Negative media reaction and public outcry in cases of executive compensation packages viewed as excessive, regardless as to whether or not they really are, has set the stage for government regulators, the Internal Revenue Service and State Attorney General Offices to investigate, audit and suppress abuses. As a result of their findings, more federal and state statutes and regulations concerning not-for-profit executive compensation are being enacted.

Actions taken by State Legislatures and Attorney General Offices in New Jersey and New York to limit executive compensation and reported investigations of not-for-profit organizations to rein in suspected abusive executive compensation practices are acting as a stimulus for even more government regulation. As a result, this is causing many not-for-profit boards across the country to examine their board governance strategies and practices concerning executive compensation and how they will pay their top people in the future.

## **So who oversees and regulates who?**

**Many tax-exempt nonprofit organizations such as 501(c)(3) charitable organizations which may include certain foundations, 501(c)(4) Quasi-governmental organizations, 501(c)(14) State Chartered Credit Unions and 501(c)(6) Business and Trade Associations, are:**

- Required to file an annual tax information return – Form 990 or 990EZ depending on the size of the organization
- Subject to Section 4958 of the Internal Revenue Code regarding Intermediate Sanctions - except for 501(c)(6) Business and Trade Associations and Private Foundations.
- Subject to Private Inurement requirements
- Subject to impermissible private benefit transaction rules
- Under IRS scrutiny for 457 Deferred Compensation Plans
- Under IRS scrutiny for excessive and unreasonable executive compensation practices

**When reviewing not-for-profit executive compensation, what positions are potentially under scrutiny?** Depending on who is scrutinizing whom, the compensation of officers, directors, trustees, key employees, and the highest compensated employees and independent contractors rise to the top of the list.

Officers typically would include Chief Executive Officers, Presidents, Executive Directors, Chief Operating Officers, Chief Financial Officers and Vice Presidents and/or Key Employees who have responsibilities similar to an officer when managing a significant segment or activity for the organization.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Smart Business and Board Governance Strategies to Successfully Prepare for and Defend a Tax-Exempt Nonprofit Executive Compensation Review/Audit

Also available as part of the eCourse

[2019 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the  
36<sup>th</sup> Annual Nonprofit Organizations Institute session

"Doing Business with and Compensating Insiders: Strategies for Success and Intermediate Sanctions Compliance"