

# 37<sup>th</sup> Annual Nonprofit Organizations Institute

## January 23-24, 2020 • Four Seasons Hotel • Austin, TX

**Thursday Morning, Jan. 23, 2020**

**Presiding Officer:**

**Tomer Inbar**, Patterson Belknap Webb & Tyler LLP - New York, NY

7:30 am	<b>Registration Opens</b>  Includes continental breakfast.
8:35 am	<b>Welcoming Remarks</b>
8:45 am 1.25 hrs	<b>A View of the Sector: Implementing Tax Reform for Tax-Exempt Organizations</b>  The IRS and Treasury have issued preliminary guidance on several provisions of the Tax Cuts and Jobs Act of 2017 affecting exempt organizations, but both the legislation and the guidance pose many interpretive and operational challenges. Explore how, two years after the Act's passage, organizations are responding to the preliminary guidance from the IRS and Treasury, and how implementation of the legislation may continue to progress in the coming year. Plus, hear discussion on other key trends and legislative developments affecting tax-exempt organizations.  Alexander L. Reid, Morgan, Lewis & Bockius LLP - Washington, DC Carolyn O. "Morey" Ward, Ropes & Gray LLP - Washington, DC
10:00 am	<b>Break</b>

### CONCURRENT TRACKS

#### TRACK A: Election Year Issues: Public Charities

**Presiding Officer:**

**Tomer Inbar**, Patterson Belknap Webb & Tyler LLP - New York, NY

10:20 am 0.75 hr	<b>What You Need to Know to Get Through the 2020 Election</b>  Gain insight on how to help your 501(c)(3) continue to pursue its mission without violating the prohibition against political campaign intervention in the upcoming elections. Ongoing issue advocacy, voter activation efforts, social media communications, personal political activity by board and staff members - all are possible, but present potential pitfalls that you need to know how to avoid.  Irina Petrova, Natural Resources Defense Council - New York, NY John Pomeranz, Harmon, Curran, Spielberg + Eisenberg, LLP - Washington, DC Doug Varley, Caplin & Drysdale, Chartered - Washington, DC
11:05 am 0.75 hr	<b>Multi-organization Structures for Advocacy: 501(c)(3)s, 501(c)(4)s, PACs, etc.</b>  Achieving your policy and political goals might require using different types of organizations - a 501(c)(3) educational arm, a 501(c)(4) to engage in more lobbying and political activity, state or federal (or both) super PAC or hard-money political committees, and maybe more. This session will help you structure a multifaceted advocacy program that complies with tax law and campaign finance law.  Irina Petrova, Natural Resources Defense Council - New York, NY John Pomeranz, Harmon, Curran, Spielberg + Eisenberg, LLP - Washington, DC Doug Varley, Caplin & Drysdale, Chartered - Washington, DC

11:50 am	<b>Pick Up Lunch</b>  Included in registration.
----------	---

---

## TRACK B: Private Foundation Compliance: Taxable Expenditures

### Presiding Officer:

**Norman E. Nabhan**, Graystone Consulting - Houston, TX

10:20 am 0.75 hr	<b>Funding and Conducting Advocacy: Flashpoints for Private Foundations</b>  Hear the key legal considerations for private foundations that are involved in conducting or funding advocacy. These include the IRS lobbying rules, other federal and state lobbying rules, personal versus professional activities of staff, and special considerations around elections.  Kimberly Eney, Latham & Watkins LLP - Washington, DC Elizabeth Peters, The William and Flora Hewlett Foundation - Menlo Park, CA
11:05 am 0.75 hr	<b>Taxable Expenditure Flashpoints</b>  Managing private foundation expenditures is not always intuitive. Despite charitable intentions, funding entities other than public charities require Expenditure Responsibility steps which are often missed. Individual grants for disaster or poverty relief, awards for achievement, or research of social issues require documentation of exempt purpose unlike travel or study support that require Pre-IRS approval. Even if a foundation thinks it is maintaining ER and evidence of charitable nature of its spending, missteps result in a taxable expenditure and excise tax can be imposed. How a foundation properly corrects such missteps is challenging and needed to avoid the second tier tax.  Kelli Archibald, Ernst & Young LLP - Phoenix, AZ Jody Blazek, Blazek & Vetterling - Houston, TX
11:50 am	<b>Pick Up Lunch</b>  Included in registration.

---

## MASTER CLASS: Understanding Your Web Presence (SOLD OUT)


10:20 am 1.50 hrs	<b>Understanding Your Web Presence</b>  What is “web presence” and why does it matter? Discuss what web presence is and isn’t, how nonprofits are using web presence to advance their missions, and how to assess your organization’s risks in this area.  Lawrence Mendenhall, American Academy of Ophthalmology and AAO Foundation - San Francisco, CA Sandro Serra, Pillsbury Winthrop Shaw Pittman LLP - Austin, TX
11:50 am	<b>Pick Up Lunch</b>  Included in registration.

## Thursday Afternoon, Jan. 23, 2020

### Presiding Officer:

**Tony Fundaro**, Philanthropy Southwest - Dallas, TX

## LUNCHEON PRESENTATION

	<p><b>Thank You to Our Sponsor</b></p>  <p><b>NORTHERN TRUST</b></p>
12:20 pm 0.75 hr	<p><b>Nonprofits in the News: Reporters Reveal What We See and What We Look For</b></p> <p>Attracting media attention can enable nonprofits to heighten awareness of and raise money to support mission. As a watchdog of nonprofits, the press can also expose an organization to scrutiny for which it is not prepared. Hear advice from veteran journalists on how to handle the media and experience successful interactions with the press.</p> <p>Moderator: Karey Dubiel Dye, Goldman Sachs Philanthropy Fund - Houston, TX</p> <p>Panelists: Tom Hamburger, The Washington Post - Washington, DC Ross Ramsey, The Texas Tribune - Austin, TX</p>
1:05 pm	<p><b>Break</b></p>
1:20 pm 1.00 hr	<p><b>Panel Discussion: State Attorney General Offices</b></p> <p>Gain insight into best practices from a panel of state assistant attorneys general discussing current enforcement issues, priorities, and other oversight considerations.</p> <p>Moderator: Jason R. Lilien, Loeb &amp; Loeb LLP - New York, NY</p> <p>Panelists: Yael Fuchs, Office of the New York State Attorney General - New York, NY Mary T. Henderson, Office of the Attorney General of Texas - Austin, TX Stacy Morey, Office of Oklahoma Attorney General - Oklahoma City, OK</p>
2:20 pm	<p><b>Break</b></p>

## CONCURRENT TRACKS

### TRACK C: Data Protection / DAFs

#### Presiding Officer:

**Jeffrey E. Sher**, Fizer Beck - Houston, TX

2:40 pm 0.75 hr	<p><b>GDPR and What Else Is On Our Minds: A Look at Data Protection and Cybersecurity in 2020</b></p> <p>Examine issues related to data privacy and security, including GDPR. Learn about the latest cybersecurity threats and trends impacting nonprofits, and actions that can be taken today in furtherance of compliance and in support of the overall data privacy and security mission.</p> <p>John E. Ansbach, Stroz Friedberg - Dallas, TX</p>
--------------------	--

3:25 pm 0.75 hr	<p><b>Donor Advised Funds: Issues, Challenges, Opportunities?</b></p> <p>Donor Advised Funds (DAF), have become go-to vehicles for philanthropy. Moving beyond the “charitable checkbook,” they are increasingly being used as part of innovative charitable giving strategies, for multi-entity/multi-funder initiatives, and to align grants and investments geared to catalyze and mobilize capital for good. Explore issues and considerations, both legal and practical, implicated by complex DAF transactions and relationships, including contributions of illiquid (or less liquid) assets, the growing interest in impact investing, and donor roles and involvement and ongoing positive and negative perception of DAFs.</p> <p>Jonathan S. Blum, Polsinelli PC - Dallas, TX Melanie Schnoll Begun, Morgan Stanley - New York, NY</p>
4:10 pm	<b>Break</b>

---

#### **TRACK D: Disqualified Persons and Qualifying Distributions**

##### **Presiding Officer:**

**Tony Fundaro**, Philanthropy Southwest - Dallas, TX

2:40 pm 0.75 hr	<p><b>Disqualified Person Are (Often) Challenging</b></p> <p>Explore the Chapter 42 excise tax regime applicable to private foundations and the key role disqualified persons play in exposure to self-dealing and excess business holdings. Consider the basics in mapping disqualifying persons as well as best practices for managing compliance and risks.</p> <p>Nishka Chandrasoma, Ford Foundation - New York, NY Michelle Michalowski, PwC - Washington, DC</p>
3:25 pm 0.75 hr	<p><b>Rethinking / Revisiting Qualifying Distributions</b></p> <p>How are different sized and different types of private foundations thinking about and planning to meet minimum distribution requirements in a potentially low return environment? Examine the impact of volatile markets, and the increased needs from grantees on foundations. How do the competing interests intersect and impact the foundation’s life plans if there is a perpetuity plan? What counts as a qualifying distribution when private foundations collaborate to co-fund projects by pooling resources and other interesting qualifying distribution questions?</p> <p>Michelle Michalowski, PwC - Washington, DC Jane M. Searing, Deloitte - Seattle, WA</p>
4:10 pm	<b>Break</b>

---

#### **MASTER CLASS: Investment Policies and Portfolios (SOLD OUT)**

2:40 pm 1.50 hrs	<p><b>Investment Policies and Fiduciary Duties</b></p> <p>Discussion of how foundations and endowments should consider asset allocation, spending policy, and advisory relationships within the context of fiduciary duties and spending requirements.</p> <p>Catherine Lee Clarke, Hirtle, Callaghan &amp; Co., LLC - Houston, TX Tina Lundy Melo, Fizer Beck - Houston, TX</p>
4:10 pm	<b>Break</b>

---

**TRACK E: Collaborations and UBIT****Presiding Officer:****Jeffrey E. Sher**, Fizer Beck - Houston, TX

4:20 pm 1.00 hr	<b>Collaborations - A Broader View</b>  As the philanthropic and charitable sector continues to explore how to leverage resources and achieve greater impact, collaboration continues to be an important tool. Many funders have deep experience with funder collaboratives, while others are experimenting with a broader menu of collaboration options. Identify a variety of collaboration models and introduce issues to consider.  Hillary Bounds, Chan Zuckerberg Initiative - Redwood City, CA Andrew Schulz, Arabella Advisors - Washington, DC
5:20 pm 1.00 hr	<b>UBTI Therapy Session: Practical Approaches to Tax Reform and UBTI Compliance</b>  UBIT compliance has become much more challenging post-tax reform. Focus on practical methods of addressing those challenges, including obtaining expenses and gathering other data associated with employee parking, separating UBTI into silos, and finding offsets to mitigate additional UBIT.  Ray Bunyard, Baylor Scott & White Health - Dallas, TX Justin J. Lowe, Ernst & Young LLP - Washington, DC
6:20 pm	<b>Adjourn to Reception</b>


---

**TRACK F: Effective Grantmaking and Corporate Foundations****Presiding Officer:****Tony Fundaro**, Philanthropy Southwest - Dallas, TX

4:20 pm 1.00 hr	<b>Better Grantmaking: Balancing Risk and Equity</b>  How do we create a grantmaking process that manages risk without becoming overly burdensome for our grantees? What kind of process do we create when we use an equity lens? And how do we balance the two? This session will focus on issues including identifying and managing risk, simplifying the process for your (program staff and) grantees while maintaining the necessary level of compliance and ensuring there is a good internal process to deal with the unexpected. Think that's impossible? Come learn practical ways to make that happen.  Kathleen Flynn, New Venture Fund - Washington, DC Megan Jellinek, Chan Zuckerberg Initiative - Redwood City, CA
5:20 pm 1.00 hr	<b>Corporate Foundations: Strategies to Make Them Work—Both For You and With You</b>  In addition to focusing on the pros and cons of forming a corporate foundation, examine what strategies and factors corporate foundations consider when identifying which nonprofits to support.  J. Reymundo Ocañas, BBVA USA - Houston, TX Nicola Fuentes Toubia, Fuentes Toubia, PLLC - Houston, TX
6:20 pm	<b>Adjourn to Reception</b>

---

**MASTER CLASS: Charitable Giving and Endowments (SOLD OUT)**

4:20 pm 2.00 hrs	<p><b>The Law and Lore of Endowment Funds: A 21st Century Edition</b></p> <p>A practical guide to some of the issues involved in structuring endowment gifts and administering institutional endowments. Gain insight on endowment gift agreements, endowment spending policies, and the documentation of endowment investment and spending decisions.</p> <p>John Sare, Patterson Belknap Webb &amp; Tyler LLP - New York, NY</p>
6:20 pm	<p><b>Adjourn to Reception</b></p>
6:20 pm	<p><b>Networking Reception (6:20 p.m. - 7:20 p.m.)</b></p> <p>Join us for a networking opportunity with faculty and colleagues.</p> <p><b>Thank You to Our Sponsor</b></p> 

## Friday Morning, Jan. 24, 2020

7:30 am	<p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>
<p><b>TRACK G: TX Legislative Update and Year in Review</b>  <b>Presiding Officer:</b>  <b>Joyce Hellums</b>, Ernst &amp; Young LLP - Austin, TX</p>	
8:00 am 0.75 hr	<p><b>Texas Legislative Update 2019</b></p> <p>Bills and policy trends in the 2019 Texas legislative session will impact nonprofit organizations, state associations, foundations and social service groups in various ways. Two veteran observers of the Texas public policy and political scene will present a timely review of statutory, regulatory, and legislative developments of interest.</p> <p>Richard W. Meyer, Attorney at Law - Austin, TX  Ross Ramsey, The Texas Tribune - Austin, TX</p>

8:45 am  
1.00 hr

### **Year in Review**

Review current developments in the federal tax law concerning tax-exempt organizations, including the status of Treasury and IRS guidance regarding applicable provisions of the Tax Cuts and Jobs Act, and recently issued proposed regulations, IRS rulings, and court opinions. Address the Exempt Organizations Division's FY 2020 program letter and current Priority Guidance Plan, application of the commerciality doctrine, and recent law developments concerning qualification for tax exemption, the private inurement and private benefit doctrine, legislative and political campaign activity rules, governance, public charity status, supporting organizations, private foundations, donor-advised funds, unrelated business, fundraising regulations, charitable giving, and litigation.

Alexander L. Reid, Morgan, Lewis & Bockius LLP - Washington, DC  
Materials By:  
Bruce R. Hopkins, Bruce R. Hopkins Law Firm, LLC - Kansas City, MO

9:45 am

### **Break**

---

## **MASTER CLASS: Entrepreneurship and Commerciality (SOLD OUT)**

8:00 am  
1.75 hrs

### **The Tapestry of Strategically (and Legally) Using Commercial Enterprises to Achieve Charitable Ends**

Opportunities for exempt organizations to work with and through market-oriented enterprises and interventions to pursue their charitable purposes are increasing. Doing so involves a variety of factors and attention to the pros and cons of different approaches. Strategically balancing charitability, private benefit, tax considerations, structures and forms, licensing, data, decision-making, assessments, and more are among the inter-related threads that run through these approaches. Instead of hanging loosely, these threads together create a tapestry of strategic decisions and opportunities. This master class focuses on how these considerations fit together.

Tomer Inbar, Patterson Belknap Webb & Tyler LLP - New York, NY  
John Tyler, Ewing Marion Kauffman Foundation - Kansas City, MO

9:45 am

### **Break**

---

## **CONCURRENT TRACKS**

### **TRACK H: Employee Issues**

#### **Presiding Officer:**

**Andrea L. March**, Texas Rio Grande Legal Aid - Austin, TX

10:05 am  
1.00 hr

### **Advanced Compensation and Benefits Issues**

When a nonprofit organization receives services from an individual who is employed by a related organization, whether nonprofit or for-profit, it can be complicated to determine the applicable employment tax requirements and the permissible benefits arrangements. Adding to the complexity is the new section 4960 excise tax which applies when a nonprofit tax-exempt organization pays over \$1 million in annual compensation. Review the current state of guidance on section 4960 as well as complex employment tax and benefits issues associated with shared employment, including common paymasters, reporting agents, and FUTA.

Catherine E. Livingston, Jones Day - Washington, DC  
Maura L. Whelan, Simpson Thacher & Bartlett LLP - New York, NY

11:05 am 1.00 hr	<p><b>Avoiding Labor Pains</b></p> <p>Hear hot topics addressing compliance with employment laws such as trends in leave policies, LGBTQI rights, telecommuting and post-FMLA leave accommodations, legalized marijuana and drug screens, recently effective wage and hour regulations, and more.</p> <p>Connie L. Cornell, Cornell Smith Mierl Brutocao Burton, LLP - Austin, TX</p>
12:05 pm	<p><b>Pick Up Lunch</b></p> <p>Included in registration.</p>

---

## **TRACK I: Impact Investing and Accounting Standards**

### **Presiding Officer:**

**Joyce Hellums**, Ernst & Young LLP - Austin, TX

10:05 am 1.00 hr	<p><b>Not Your Grandmother's Impact Investing</b></p> <p>The field of impact investing continues to expand and provide an increasingly wide range of opportunities for nonprofit organizations looking to sync their mission and their investments. The Global Impact Investing Network has estimated the size of the global impact investing market to be \$502 billion. Take a look at a diverse range of impact investment options, including social impact funds, charitable note programs, SAFEs, pay-for-performance transactions, and opportunity zones. Explore different investment opportunities and legal issues to consider for different types of nonprofit investors.</p> <p>David A. Levitt, Adler &amp; Colvin - San Francisco, CA Darren B. Moore, Bourland, Wall &amp; Wenzel, P.C. - Fort Worth, TX</p>
11:05 am 1.00 hr	<p><b>The Accounting Standards Are Not Just For the Accountants Any More</b></p> <p>Generally accepted accounting principles (GAAP) determine whether, when, and how contributions are recognized in the accounting records and financial statements. Accounting for contributions can be significantly influenced by how resources are solicited and documented by donors and nonprofit organizations. Donors, development professionals and accountants need to understand how to assist each other so we're all "rowing in the same direction" to serve the needs of the not-for-profit community. Hear an overview of the new accounting rules for contributions (Accounting Standards Update (ASU) 2018-08, Not-for-Profit Entities (Topic 958): Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made) and a discussion of the adoption of the new Financial Reporting Disclosures for Operating Liquidity.</p> <p>Amy B. Robinson, The Kresge Foundation - Troy, MI Kay Walther, Blazek &amp; Vetterling - Houston, TX</p>
12:05 pm	<p><b>Pick Up Lunch</b></p> <p>Included in registration.</p>

---

## **MASTER CLASS: Dissecting the Grant Agreement (SOLD OUT)**



10:05 am 2.00 hrs	<p><b>Dissecting the Grant Agreement</b></p> <p>Review the key components of a grant agreement, including provisions unique to private foundations, considerations for advocacy organizations, and how to structure grants to fiscal sponsors, non-charitable organizations, and individuals. Expect practical advice from the perspective of both the grantor and the grantee, a lively discussion, and sample language.</p> <p>Hillary Bounds, Chan Zuckerberg Initiative - Redwood City, CA Kristy Bernard Tsadick, The William and Flora Hewlett Foundation - Menlo Park, CA</p>
12:05 pm	<p><b>Pick Up Lunch</b></p> <p>Included in registration.</p>

## Friday Afternoon, Jan. 24, 2020

### Presiding Officer:

**Mia Hsu Burton**, Michael & Susan Dell Foundation - Austin, TX

### LUNCHEON PRESENTATION

12:35 pm 0.75 hr	<p><b>Giving Circles and Other Philanthropic Networks</b></p> <p>The number of giving circles have quadrupled in the last decade with women making up 70% of giving circles. Hear from Texas Women's Foundation, a leader in this space, and the founders of two successful giving circles in Texas, on the advantages and key considerations in bringing together individuals with shared experience, culture or interest to raise money and engage your donors.</p> <p>Moderator: Dawn Hooper, Texas Women's Foundation - Dallas, TX Panelists: A. Shonn Brown, Kimberly-Clark Corporation - Irving, TX Caren K. Lock, TIAA - Lewisville, TX</p>
1:20 pm	<b>Break</b>
1:35 pm 1.00 hr ethics	<p><b>Ethical Challenges for the Nonprofit Organizations Advisor</b></p> <p>Meghan R. Biss, Caplin &amp; Drysdale, Chartered - Washington, DC Bridget M. Weiss, Arnold &amp; Porter Kaye Scholer LLP - Washington, DC</p>
2:35 pm	<b>Break</b>

### CONCURRENT TRACKS

#### TRACK J: Public Charities: Humanitarian Activities and "Office Hours"

##### Presiding Officer:

**Danika Hudik Mendrygal**, Mendrygal Law, PLLC - Dallas, TX

2:55 pm 1.00 hr	<p><b>Legal Challenges in the Provision of Humanitarian Assistance to Refugees, Asylees, and Migrants</b></p> <p>Providing humanitarian assistance to refugees, asylees, and migrants in the United States and around the world generally has become increasingly challenging thanks to laws and policies adopted by governments hostile to the arrival of such individuals in their countries. Organizations seeking to assist these populations must navigate the ever changing legal landscape in multiple jurisdictions and find ways to continue providing needed assistance to the world's most vulnerable populations.</p> <p>Ricardo A. Castro, International Rescue Committee - New York, NY Jonathan Denis Ryan, RAICES - San Antonio, TX</p>
3:55 pm 1.00 hr	<p><b>"Office Hours" - Key Issues and Questions Facing Public Charities</b></p> <p>Gain insight on key issues and common challenges facing public charities, and share your own questions with conference faculty and fellow colleagues in this interactive session.</p> <p>James P. Joseph, Arnold &amp; Porter Kaye Scholer LLP - Washington, DC</p>
4:55 pm	<b>Adjourn</b>

---

#### **TRACK K: Private Foundations: Issues in Charitability and "Office Hours"**

##### **Presiding Officer:**

**Mia Hsu Burton**, Michael & Susan Dell Foundation - Austin, TX

2:55 pm 1.00 hr	<p><b>Advanced Issues in Charitability: Food, Energy and the Environment (and then there is Education)</b></p> <p>In an increasingly complex world, charities are frequently called upon to address newer and more pressing challenges. Explore the contours and frontiers of charitability as applied to food, energy, the environment, and education—all areas where the boundaries of charitability can blur—and discuss how charities can navigate the legal landscape surrounding these topics.</p> <p>Edward T. Chaney, Schell Bray PLLC - Chapel Hill, NC Lauren Simpson, Patterson Belknap Webb &amp; Tyler LLP - New York, NY</p>
3:55 pm 1.00 hr	<p><b>"Office Hours" - Key Issues and Questions Facing Private Foundations</b></p> <p>Gain insight on key issues and common challenges facing private foundations, and share your own questions with conference faculty and fellow colleagues in this interactive session.</p> <p>Ruth M. Madrigal, KPMG LLP - Washington, DC David A. Shevlin, Simpson Thacher &amp; Bartlett LLP - New York, NY</p>
4:55 pm	<b>Adjourn</b>