39th Annual Nonprofit Organizations Institute
January 13-14, 2022 • Proceeding as Live Webcast

Thursday Morning, Jan. 13, 2022

Presiding Officer:
Tony Fundaro, Philanthropy Southwest - Dallas, TX

8:15 am	**Welcoming Remarks**
8:30 am 1.00 hr	**A View of the Sector** Kick off the conference with a rollercoaster ride through the good, the bad, and the ugly of recent legislative, regulatory, and judicial developments affecting exempt organizations. Presenters share their observations of recent notable trends in the sector, including disclosure of donors to state regulators, new investment vehicles, donor advised funds, tax reform, and much more. Come prepared for heart-stopping thrills! Rosemary E. Fei, Adler & Colvin - San Francisco, CA Alexander L. Reid, BakerHostetler - Washington, DC
9:30 am	**10-Minute Break**
9:40 am 1.00 hr	**The Nonprofit Sector in the Age of COVID-19: Challenges, Opportunities and Responses** Review some of the strategies that nonprofit organizations have used to mitigate the disruption in their governance, finances, programs and operations during the pandemic. Topics will include: (i) revisiting mission statements and charitable purposes; (ii) revisiting age-old tensions between current payout and “rainy day” endowment funds; and (iii) managing attrition, recruitment/retention, and remote workforce issues. We will also suggest a possible silver lining of 2020—grant-makers’ use of increasingly creative, efficient and flexible approaches to ensure mission-critical support to those in need (PRIs, individual grants, disaster relief grants, etc.). Diara M. Holmes, Loeb & Loeb LLP - Washington, DC Michelle Michalowski, PwC - Washington, DC Andrew Schulz, New Venture Fund - Washington, DC
10:40 am	**10-Minute Break**

CONCURRENT TRACKS

TRACK A: In Times of Crisis: Governance and Investing
Presiding Officer:
Kay Walther, Blazek & Vetterling - Houston, TX

10:50 am 0.75 hr	**Governance in a Time of Crisis** This panel will cover both proactive steps to prepare an organization for crisis and practical guidance for navigating through a crisis. Topics will include fiduciary issues, the tools available to allow board members and officers to exercise their fiduciary duties, the role of the board and management during a crisis, and challenging decisions involving funding and endowment management. Katherine Karl, The Humane Society of the United States - Washington, DC Justin Zaremby, Patterson Belknap Webb & Tyler LLP - New York, NY

11:35 am	**5-Minute Break**
11:40 am 0.75 hr	**Investing in a Time of Crisis** Turmoil in the Capital Markets caused by economic dislocations like the Covid Pandemic can create stress on the investment portfolios of Nonprofit organizations, but can also create opportunities if cool heads can prevail. Kathleen (Katie) Gerber, Holland & Knight LLP - Dallas, TX Norman E. Nabhan, Graystone Consulting - Houston, TX
12:25 pm	**Break for Lunch—Presentation Resumes at 12:55 p.m.**

TRACK B: COVID-19 Employment Issues / Activities and Events
Presiding Officer:
Nicola Fuentes Toubia, Fuentes Toubia, PLLC - Houston, TX

0.75 hr	**(10:50 a.m.) Employment Issues and the Pandemic** Discuss employment law and tax considerations for remote workforces; plus, a brief overview of other important considerations for employers during the pandemic. E. Pierce Blue, Morgan, Lewis & Bockius LLP - Washington, DC Kenneth Hausser, Ernst & Young LLP - Iselin, NJ
	(11:35 a.m.) 5-Minute Break
0.75 hr	**(11:40 a.m.) Business as Usual?: The Legal Challenges with In-Person Activities and Events** As force majeure meeting, conference, and event terminations have become virtually impossible anymore, and as nonprofits move ahead with their 2022 events with an expectation of significantly reduced attendance and with COVID still very much a factor, explore how to mitigate your organization's contractual and liability risks in connection with your in-person and hybrid events. From attrition penalties to vaccine mandates (and exceptions) to COVID protocols to contracting for your and your clients' future meetings and conferences, this session will offer real-time, practical advice and guidance, best practices, and suggestions for dealing with the daunting challenges inherent in your 2022 events. Lawrence Mendenhall, American Academy of Ophthalmology and AAO Foundation - San Francisco, CA Jeffrey S. Tenenbaum, Esq., Tenenbaum Law Group PLLC - Washington, DC
	(12:25 p.m.) Break for Lunch—Presentation Resumes at 12:55 p.m.

MASTER CLASS: Disaster Relief Organizations

1.50 hrs

(10:50 a.m.) MASTER CLASS: Disaster Relief Funds: An Overview of Potential Structures, Related Tax Issues, and Practical Considerations

An in-depth review of the structures available to house a charitable disaster relief fund, including a 501(c)(3) organization, a fund at a larger charity (such as a community foundation), and other outsourced options. Discuss legal structure and impact, tax implications, and practical considerations, with a particular focus on employer-related funds. Staff from the Greater Houston Community Foundation will share their expertise in administering employer-related funds, and also share insights from their role with city-wide relief in recent years.

Stephanie Blair, Greater Houston Community Foundation - Houston, TX
Danika Hudik Mendrygal, Mendrygal Law, PLLC - Dallas, TX
Nadia Valliani, Greater Houston Community Foundation - Houston, TX

(12:25 p.m.) Break for Lunch—Presentation Resumes at 12:55 p.m.

Thursday Afternoon, Jan. 13, 2022

Presiding Officer:
Megan E. Bell, Morgan, Lewis & Bockius LLP - New York, NY

LUNCHEON PRESENTATION

12:50 pm

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12:55 pm
0.75 hr

Keynote Luncheon Presentation: A Conversation with Brittany K. Barnett

Hear attorney, author, and entrepreneur, Brittany K. Barnett, discuss her experience and advice for others as a founder of two nonprofit organizations, as pro bono counsel representing clients incarcerated in federal prison, and as founder of social enterprises devoted to providing supports and resources to formerly incarcertated individuals.

Moderator:
Elizabeth Henneke, Lone Star Justice Alliance - Austin, TX
Panelist:
Brittany K. Barnett, Buried Alive Project and Girls Embracing Mothers, Inc. - Dallas, TX

1:40 pm

15-Minute Break

1:55 pm 1.00 hr	**GC Roundtable: Diversity, Equity and Inclusion** Panelists will discuss how they navigate the many legal issues that arise in the pursuit of diversity, equity and inclusion both in the US and overseas. Moderator: Megan E. Bell, Morgan, Lewis & Bockius LLP - New York, NY Panelists: Ricardo A. Castro, International Rescue Committee - New York, NY Nishka Chandrasoma, Ford Foundation - New York, NY Christie Yang, Walton Family Foundation - Washington, DC
2:55 pm	**20-Minute Break**

CONCURRENT TRACKS

TRACK C: DEI and Charitability / ESG Investing
Presiding Officer:
Megan E. Bell, Morgan, Lewis & Bockius LLP - New York, NY

3:15 pm 0.75 hr	**Charitability and Section 1981** Understand the legal guardrails for grants and PRIs that – in an effort to advance diversity and inclusion – prioritize or limit eligibility on the basis of race or other protected characteristics. Discuss the pros and cons of race-exclusive grantmaking and PRIs, as well as ways to mitigate the risk of a claim under anti-discrimination laws when making race-conscious grant and investment decisions. Emily Cuneo DeSmedt, Morgan, Lewis & Bockius LLP - Princeton, NJ Joshua J. Mintz, John D. and Catherine T. MacArthur Foundation - Chicago, IL
4:00 pm	**5-Minute Break**
4:05 pm 0.75 hr	**ESG Investing** Environmental, social and governance (ESG) and impact investing continues to grow from a field of interest to a robust investment discipline. This discussion will demystify the broad ESG investing landscape and provide insights on effective and actionable ways to incorporate ESG and impact investing into nonprofit portfolios, including both legal and investment perspectives. Nancy E. McGlamery, Adler & Colvin - San Francisco, CA Abigail Pohlman, Goldman Sachs - New York, NY
4:50 pm	**10-Minute Break**

TRACK D: Activism and Engagement / Employers and DEI
Presiding Officer:
Karey Dubiel Dye, Goldman Sachs Philanthropy Fund - Houston, TX

0.75 hr	**(3:15 p.m.) Activism and Engagement** Private foundations can and do play a significant role in funding strong advocacy and the development of more equitable communities. Discussions will cover an overview of laws that impact foundation support of advocacy; the use of general operating, special purpose and expenditure responsibility grantmaking to help all types of organizations pursue civic engagement; the ways foundations can support community engagement beyond funding; and specific initiatives where foundations are engaging in advocacy and evaluating their own grantmaking practices in an effort to build communities that support all people. Jen Powis, Alliance for Justice - Houston, TX Tim Racer, Ewing Marion Kauffman Foundation - Kansas City, MO
	(4:00 p.m.) 5-Minute Break
0.75 hr	**(4:05 p.m.) Data and Measurement: The Secret to Intentional and Impactful DEI Initiatives** Data-based DEI approach is key for long-term, systemic transformation. Explore best practices on how to move the needle in DEI and discuss actionable interventions, measurement, benchmarking, and more. Learn how nonprofit leaders must intentionally leverage all three parts of diversity, equity, and inclusion in order to bring about lasting change. Starlett (Star) Carter, Kanarys, Inc. - Dallas, TX
	(4:50 p.m.) 10-Minute Break

MASTER CLASS: Anatomy of a Grant Agreement

1.50 hrs	**(3:15 p.m.) MASTER CLASS: Anatomy of Grant Agreement** 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. Vanessa Goodwin, Arnold Ventures LLC - Houston, TX Kristy Bernard Tsadick, The William and Flora Hewlett Foundation - Menlo Park, CA
	(4:50 p.m.) 10-Minute Break
5:00 pm 1.00 hr ethics	**Professional Opinions and Tax-Exempt Organizations** There are different types and reasons for opinions: comfort (e.g., it’s exempt from UBIT, it’s a program-related investment), contractual condition (e.g., required for a bond offering), escape hatch (e.g., right to terminate joint venture if counsel opines that tax-exempt status is at risk), proper tax reporting (e.g., 990 and 1023EZ), and, the one our clients are often most concerned with, penalty protection (e.g., reliance on a reasoned written legal opinion of counsel – IRC 4941, 4944, 4945, 4958). Address the legal, ethical, comical and practical considerations involved in assessing the need for an opinion, how to arrive at any given “comfort level,” and how much (or little) it takes for a written legal opinion to be “reasoned.” Ofer Lion, Seyfarth Shaw LLP - Los Angeles, CA LaVerne Woods, Davis Wright Tremaine LLP - Seattle, WA

6:00 pm	**Adjourn**
6:15 pm	**Networking Event in Zoom (6:15 p.m. – 7:00 p.m.)** Join us in Zoom for a fun opportunity to reconnect and network with faculty and colleagues.

Friday Morning, Jan. 14, 2022

Presiding Officer:
Joyce Hellums, Ernst & Young LLP - Austin, TX

8:55 am	**Morning Announcements**
9:00 am	**Bruce R. Hopkins Remembrance and Dedication** We dedicate this year's conference to Bruce R. Hopkins, whose involvement and commitment to this program was instrumental in its success for many years.
9:10 am 0.75 hr	**Texas Legislative and Public Policy Update** Challenges and disasters of all sorts kept the leadership of the 2021 Texas Legislature chasing solutions for a rapidly-changing state. Nonprofit entities increasingly partner with governments in policy and program development. A veteran observer reviews legislative, regulatory and policy trends that made news. Richard W. Meyer, Attorney at Law - Austin, TX
9:55 am	**10-Minute Break**
10:05 am 1.00 hr	**Commercial/Market Based Approaches to Impact Intervention** Impact and profit are not mutually exclusive; indeed, the lines between investment and impact continue to blur. Investments can have impact-like results, and grants can have investment-like results. Discuss the variety of commercial, market-based options exempt organizations (and their funders) should have in mind as they pursue their missions. Ruth M. Madrigal, KPMG LLP - Washington, DC John Tyler, Ewing Marion Kauffman Foundation - Kansas City, MO
11:05 am	**10-Minute Break**

CONCURRENT TRACKS

TRACK E: Lifecycle of Private Foundation Engagement
Presiding Officer:
Lucille DiDomenico, DiDomenico Group - Dallas, TX

11:15 am 0.75 hr	**Lifecycle of Private Foundation Engagement and Compliance Concerns: PART 1** A practical guide to navigating the Chapter 42 excise tax regime from a legal and accounting perspective. Comprehensively review the rules applicable to private foundations and common traps for the unwary. Discuss issues to consider and share with persons considering creation of a new foundation. Gain insight to ensure compliance in the areas of complex grant-making, direct programmatic activities and investing. Understand the reporting and excise tax implications of violations. Joel Beck-Coon, Humanity United - San Francisco, CA Jody Blazek, Blazek & Vetterling - Houston, TX Emiliano Martinez, Chan Zuckerberg Initiative - Redwood City, CA Maura L. Whelan, Simpson Thacher & Bartlett LLP - New York, NY
12:00 pm	**5-Minute Break**
12:05 pm 0.75 hr	**Lifecycle of Private Foundation Engagement and Compliance Concerns: PART 2**
12:50 pm	**Break for Lunch—Presentation Resumes at 1:20 p.m.**

TRACK F: Lifecycle of Public Charity Engagement
Presiding Officer:
Joyce Hellums, Ernst & Young LLP - Austin, TX

0.75 hr	**(11:15 a.m.) Lifecycle of Public Charity Engagement: PART 1** Gain insight into the spectrum of public charity representation, from structuring a new public charity through terminating its existence. Explore strategies for addressing common tax and legal issues faced by public charities throughout their life cycles, including meeting the public support test, managing and minimizing unrelated business income tax, avoiding intermediate sanctions and prohibited private benefit and inurement, facing Form 990 reporting challenges, and structuring transactions with taxable organizations and insiders. Stephen M. Clarke, Ernst & Young LLP - Washington, DC Elinor Ramey, Steptoe & Johnson LLP - Washington, DC Chelsea R. Rubin, Morgan, Lewis & Bockius LLP - Washington, DC Bridget M. Weiss, Arnold & Porter Kaye Scholer LLP - Washington, DC
	(12:00 p.m.) 5-Minute Break
0.75 hr	**(12:05 p.m.) Lifecycle of Public Charity Engagement: PART 2**
	(12:50 p.m.) Break for Lunch—Presentation Resumes at 1:20 p.m.

MASTER CLASS: Alternative Structures

1.50 hrs	**(11:15 a.m.) MASTER CLASS: 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. Laura E. Butzel, Patterson Belknap Webb & Tyler LLP - New York, NY Tomer Inbar, Morgan, Lewis & Bockius LLP - New York, NY
	(12:50 p.m.) Break for Lunch—Presentation Resumes at 1:20 p.m.

Friday Afternoon, Jan. 14, 2022

Presiding Officer:
Mia Hsu Burton, Michael & Susan Dell Foundation - Austin, TX

LUNCHEON PRESENTATION

1:15 pm	**THANK YOU TO OUR LUNCH PRESENTATION SPONSOR** armanino
1:20 pm 0.75 hr	**Ask the Experts** Gain insight on key issues and common challenges facing public charities and private foundations and share your own questions with conference faculty and fellow colleagues in this interactive session. Hillary Bounds, Gates Ventures - Seattle, WA John Sare, Patterson Belknap Webb & Tyler LLP - New York, NY Nicola Fuentes Toubia, Fuentes Toubia, PLLC - Houston, TX
2:05 pm	**20-Minute Break**

CONCURRENT TRACKS

TRACK G: DAFs / Advanced Issues in Fundraising
Presiding Officer:
Mia Hsu Burton, Michael & Susan Dell Foundation - Austin, TX

2:25 pm 0.75 hr	**Donor Advised Funds: Past, Present and Future** This session will provide an overview of donor advised funds (DAFs) and their uses, both common and creative; recent litigation on the relationship between donors and DAFs; and proposed legislation and IRS guidance that could affect DAFs in the future. Dahlia B. Doumar, Patterson Belknap Webb & Tyler LLP - New York, NY Justin J. Lowe, Ernst & Young LLP - Washington, DC
3:10 pm	**5-Minute Break**
3:15 pm 0.75 hr	**Advanced Issues in Fundraising** With the effects of the novel coronavirus, nonprofits were forced to adapt and invent novel methods of fundraising. Evaluate the practical and technical implications of the changes and trends affecting the fundraising landscape. Meghan R. Biss, Caplin & Drysdale, Chartered - Washington, DC Jonathan S. Blum, Polsinelli PC - Dallas, TX
4:00 pm	**Adjourn**

TRACK H: Non-Charitable Entities / Affordable Housing Case Study
Presiding Officer:
Andrea L. March, Texas Rio Grande Legal Aid - Austin, TX

0.75 hr	**(2:25 p.m.) Utility of Non-Charitable Entities** Sometimes, changing the world requires philanthropist to use more entities than just public charities and private foundations. Explore the use 501(c)(4) organizations and other tax-exempt, non-charitable entities, as well as LLCs, taxable nonprofits, and foreign affiliates. Understanding the pros and cons of these various entities, along with the impact they will have on a related entity’s external financial reporting, and a potential donor’s tax. James P. Joseph, Arnold & Porter Kaye Scholer LLP - Washington, DC Kay Walther, Blazek & Vetterling - Houston, TX
	(3:10 p.m.) 5-Minute Break
0.75 hr	**(3:15 p.m.) Case Study on Charitability, Structure and Compliance: Affordable Housing** Few charitable activities can be as complex and challenging as affordable housing. Charities that develop and maintain affordable housing (and their funders) must contend with the limitations of traditional definitions of charity in a modern context, as well as the private benefit and other tax implications that flow from complex financing, such as tax credits, capital stacks, and joint ventures. All of this makes for a great study on how charities can innovate to meet crucial needs in a changing world while staying true to 501(c)(3) status, regardless of the issues area. Edward T. Chaney, Schell Bray PLLC - Chapel Hill, NC Walter Moreau, Foundation Communities - Austin, TX
	(4:00 p.m.) Adjourn

MASTER CLASS: Data Protection and Cybersecurity

1.50 hrs	**(2:25 p.m.) MASTER CLASS: Data Protection and Cybersecurity** 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. Shawn E. Tuma, Spencer Fane - Plano, TX
	(4:00 p.m.) Adjourn