AICPA / ASC Glossary defines as:
- 7 broad categories of individuals, organizations and relationships
- Characterized by actual or potential "significant influence" over affairs
IRS Intermediate Sanctions

- IRC 4958 imposes:
  - Repayment/‘claw back’ requirements on any excess benefit transaction
  - Punitive excise taxes and other penalties
  - On any Disqualified Person or Organization Manager involved in the transaction

Disqualified Individual – Organization Manager

- IRC 4958 definitions:
  - Disqualified Individual - any person in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization
  - Organization Manager - an organization manager is generally an officer, director/trustee or any individual having similar powers
There’s our link... we will likely find instances of overlap between the two groups. Let’s look at the implications of the Intermediate Sanctions on these individuals.

Intermediate Sanctions

- Enacted in 1996 – After cases of excessive personal enrichment
- Alternative to Revocation of an Organization’s Tax Exemption
Intermediate Sanctions

- Applies to 501(c)(3) & (c)(4) Organizations
- 2009 – 2013 IRS Colleges and Universities Compliance Project

- Defines an Excess Benefit Transaction
- Specifies the remedy for them
Excess Benefit Transaction

- Between the organization and a Disqualified Individual
- Disqualified Individual receives a benefit in excess of the organization’s

Excess Benefit Remedy

- Disqualified Individual must repay the excess with interest
- Disqualified Individual may be subject to significant excise tax on excess benefit
Excess Benefit Remedy

- Organization Managers (e.g., Board) may be subject to penalties
- Excess Benefit Transactions and remedy must be disclosed in Form 990

The Risks

- Financial - to all parties
- Reputational – to the organization and all parties
Audit Implications

- Identify all Disqualified Individuals
- Examine transactions for any potential excess benefits

Avoiding Problems
Intermediate Sanctions

- Rebuttable Presumption of Reasonableness
- A procedure for minimizing risks

Rebuttable Presumption of Reasonableness

- If the organization satisfies requirements — the transaction is presumed to be reasonable
- IRS required to refute with “sufficient contrary evidence”
**Authorized Body – No Conflict of Interest**

- Decision made by an authorized body without any conflict of interest prior to the transaction
- Appropriate data/advice obtained in advance used as basis for the decision
- Thorough and timely minutes are kept of discussions, deliberations and decisions

**Rebuttable Presumption of Reasonableness**

- Bylaws or procedure manuals describe the authority associated with major decisions
- If any member has a conflict – they must recuse & excuse themselves
Appropriate Data/Advice

- IRS guidance focuses on comparability as a key factor to determine reasonableness
- Criteria should be explained for establishing comparables used in decision making
- Expert advice from an outside party may also be used as the basis for decision making

Thorough & Timely Minutes

- IRS requires ‘contemporaneous’ minutes – the sooner of 60 days or next meeting
- Minutes must be informative in all respects – participants, information provided, etc.
- Details are important!
IRS College & University Compliance Study

2016 Annual Conference · Miami, Florida

Focus – Executive Compensation

- Compensation for leadership positions has grown significantly
- Public skepticism about executive compensation has become outrage
- Outcries over higher education costs plus executive compensation – a potential minefield

2016 Annual Conference · Miami, Florida
Executive Compensation – Findings

- ‘Comparability’ problems: no criteria, inappropriate/presumptuous peers
- Compensation data sources with no criteria to establish comparability

Illustrative Audit – Executive Pay

- Rebuttable Presumption of Reasonableness – can be used as a guide
- Examine the governance process
- Examine pertinent documentation
Examine the Governance Process

- Has a specific committee been assigned for oversight of executive compensation?
- Only independent individuals insofar as executive pay is concerned?
- Have formal pay policies/guiding principles been established for executive pay?

Examine Pertinent Documentation

- Pay policies and guiding principles – are they specific? Directly tied to institution’s needs?
- Competitive data analyses – ‘comparable’ institutions? Similar positions? Credible?
- Meeting minutes – do they exist? Are they timely? Are they detailed?
Examine Pertinent Documentation

- All executive transactions: contracts, qualified & non-qualified plans, perquisites, etc.
- Form 990 & Schedule J – are responses consistent with observed practices?

Illustrative Audit – Executive Pay

- Rebuttable Presumption of Reasonableness – can be used as a guide
- Examine the governance process
- Examine pertinent documentation
Questions?