



Penn
UNIVERSITY of PENNSYLVANIA

Intermediate Sanctions

Senior BA Meeting

May 18, 2022



Division of Finance



Agenda

- What are Intermediate Sanctions?
- Who is subject to Intermediate Sanctions?
- What is an “excess benefit transaction”?
- Rebuttable presumption of reasonableness
- Imposition of excise tax
- Next steps

What are Intermediate Sanctions?

§4958 of the Internal Revenue Code imposes:



Excise tax on an **excess benefit transaction** between a disqualified person and an applicable tax-exempt organization

The **disqualified person** who benefits from an excess benefit transaction **is liable for the excise tax**

An **organizational manager** may also be **liable for an excise tax** on the excess benefit transaction



Who is subject to Intermediate Sanctions?

- **Disqualified Person** – Any person in a position to **exercise substantial influence of the affairs** of an applicable tax-exempt organization at any time during the “lookback period”
 - This includes certain family members of an individual with substantial influence
- The “lookback period” is the five-year period before the excess benefit transaction occurred.



Examples of Disqualified Persons

Trustees

Officers

Overseers

Donors

Deans & Vice
Deans

Department
Chairs

Basic Science
Chairs

Physicians

Faculty

Others (Facts &
Circumstances
based)



Who is subject to Intermediate Sanctions (cont'd)

- **Organization Manager** – any individual with the **authority or apparent authority to approve compensation or other transactions** on behalf of the University or Health System, regardless of title.



Examples of Organization Managers

Officer

Director

Trustee

Associate/Assistant
Vice President

Senior Business
Administrator

Senior Manager

Business
Administrator

Manager

Procurement
Specialists

Department
Directors

Associate Directors



What is an “Excess Benefit Transaction”?

- Any transaction in which **an economic benefit is provided** by the University or UPHS directly or indirectly **to or for the use of any disqualified person** and the **value of the economic benefit exceeds the value of the consideration received for providing the benefit**
- **Look at the FMV of the property**
 - **Compensation & other benefits**
 - **Exchange of property**



Potential Excess Benefit Transactions



Compensation arrangements, including fringe benefits (both reported and unreported)



Property transactions, including both real and personal property as well as sales, purchases or uncompensated use of assets



Rental agreements



Other contractual arrangements; vendor relationships



Rebuttable Presumption of Reasonableness

- Advanced approval by the governing body (or authorized committee such as the Compensation Committee) that is comprised of individuals entirely without conflict
- Reliance upon appropriate data as to comparability **prior** to the board making its determination
- Adequately documenting the basis for the board's determination **concurrent** with making its decision



Imposition of Excise tax



- Disqualified Person who receives an excess benefit
 - **25% Excise Tax**
- Disqualified Person who receives an excess benefit and does not return such excess benefit to the organization within a prescribed time frame
 - **200% Excise Tax**
- Organization manager, who knowingly approves an excess benefit transaction
 - **10% Excise Tax (Limited to \$20k per transaction)**



Next Steps ...

- Updated Intermediate Sanctions website
 - Disqualified Person/ Organization Manager decision tree
- Knowledge Link training
 - Profiler question

