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**Authorities Budget Office  
Board Member Training Compliance  
Follow Up  
December 4, 2019**

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The mission of the Authorities Budget Office (ABO) is to make public authorities more accountable and transparent and act in ways consistent with their governing statute and public purpose, in accordance with the reporting and governance provisions of Public Authorities Law. The ABO is authorized by Title 2 of Public Authorities Law to compel any authority which is deemed to be in non-compliance with Public Authorities Law to submit to the ABO a detailed explanation of such failure to comply. In addition, the ABO has the power to publicly warn and censure authorities for non-compliance, and to recommend suspension or dismissal of officers and directors.

### **Background**

Public Authorities Law Section 2824 (2) requires board members of public authorities to participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment to a board. As part of annual reporting requirements, public authorities are to indicate in the Public Authorities Reporting Information System (PARIS) whether each board member has complied with the training requirement.

Between November 2016 and January 2017, the ABO conducted a review of board member compliance and issued report GR-2017-01 – Board Member Training Compliance on April 3, 2017. The review found that the information reported in PARIS was inaccurate and of the 649 board members who were reported as not attending the required training, 262 (40 percent) board members had actually attended training. The remaining 387 board members represented 153 different public authorities and had not attend training as required by Public Authorities Law.

Since some of the 387 board members had left their respective public authority board or were cited for not attending training in a separate report, the ABO issued letters to 149 public authorities notifying them of the 381 board members that had not attended the State approved training. Responses were received from 109 of the authorities pertaining to 236 board members. These responses provided records to show that 11 of the board members had complied with the training requirement or confirming that 225 board members had not attended the required training. However, 40 public authorities representing 145 of the board members failed to respond to the ABO's request for information.

The 2017 report concluded that of the 225 board members that were determined non-compliant with the training requirements, 42 board members were identified as no longer serving on their respective board, 98 board members attended training as a result of receiving ABO's letter, 40 members signed up to attend a future training

session but had not yet attended training as of the final report, and 45 board members took no action to complete the required training sessions. In addition, in a separate operational review the ABO cited four board members of the Eastern Rensselaer County Solid Waste Management Authority for failing to attend board member training. Combined with the lack of response to our inquiry letter associated with the 145 board members, a total of 234 board members had not attended the required board member training required by Public Authorities Law. These members represented 98 different authorities.

### **ABO Enforcement Actions**

Beginning in February 2019, we reviewed the board status of the 234 members identified in the previous compliance report (GR-2017-01 - Board Member Training Compliance) that had not attended board member training to determine if those members were still active on their respective board of directors. Eighty of these individuals appeared to no longer serve on the respective board based on the authorities' websites and PARIS reports. In addition, we were notified that 19 members were no longer on the authority board, due to resignation or their authority had dissolved.

We then reviewed ABO board member training records to determine if the 135 board members had since attended the State required board member training. We found 63 members (47 percent) attended board member training, while 72 board members (53 percent) did not attend the training. The 72 board members were from 34 different authorities.

In March 2019, we sent warning letters to the 72 board members that still had not attended board member training. Each letter outlined the historic communication regarding lack of compliance with the training requirement from the 2017 review and stated that the ABO still did not have a record that the member attended the required board member training. This letter served as an official warning to the member giving them until August 1, 2019 to attend ABO board member training or risk being censured and recommended for removal by their appointing authority. The board chair and chief executive officer (CEO) of each Authority also received a copy of each letter.

Following the August 1st deadline, we reviewed ABO board member training records to determine whether the 72 members attended training in response to the ABO's March 2019 letter. We found 39 members attended training subsequent to receiving the letter, and four members were no longer serving on the respective public authority board. The remaining 29 members failed to attend board member training. Of the 29 board members, 6 are ex-officio members (designated board members based on holding a specific public office) and 23 are appointed by various entities and procedures.

Pursuant to its powers and duties in Section 6 (2)(g) of Public Authorities Law, the ABO issued letters on September 30 and October 1, 2019 to the appointing authorities

recommending the removal of 23 board members from 14 different authorities for failing to participate in training regarding the legal, fiduciary, financial and ethical responsibilities as a board member. A copy of the letter was also sent to the board member, the Board Chair, and the CEO. (See Appendix A for a list of the 23 board members and the respective appointing entity.)

Each letter outlined the timeline of warning letters issued to the Authority and the board member and the lack of response or action on the part of the board member to attend the required board member training. It emphasized that the behavior demonstrates a fundamental misunderstanding of the member's fiduciary responsibility, and recommended each appointing authority take action to remove the member from the Authority board of directors for continued non-compliance with Section 2824 (2) of Public Authorities Law. The letter also requested that the appointing authority provide the ABO with a copy of the formal notice to the member removing them as a member of the board or any other correspondence by October 30, 2019.

For the six members that serve as ex-officio members on an authority board based on their public office. Public Authorities Law Section 2827 states ex-officio members are exempt from being removed from an authority because they serve by virtue of their public office. These individuals have continued to disregard their legal obligation to attend training. (See Appendix B for a list of the six ex-officio members.)

### **Result of Removal Letters**

In response to the letters recommending removal, two of the appointing authorities indicated that the respective board member resigned from the public authority board. There was no response received from the remaining 12 appointing authorities although the ABO specifically requested that each appointing authority provide a copy of the formal notice given to the respective board member to remove the member from the authority's board.

### **Conclusion**

Board members have a fiduciary duty to the authority that they serve. In order to fulfill this duty and preserve the integrity of public authorities, it is critical that every board member maintain a level of knowledge of good governance principles and the requirements of the law to provide the appropriate oversight to carry out their authority's mission. This includes attending board member training within one year of appointment, in accordance with Section 2824 (2) of Public Authorities Law. In addition, directors are recommended to participate in training upon re-appointment to the Board or at least every three years. The ABO's board member training is an integral part of this responsibility, educating all public authority board members on fiduciary duty, ethics, and risk management. Members that do not participate in the training are not fulfilling their fiduciary duty to the authority and the public that they serve. The ABO will continue to take action to censure and recommend the removal of board members that evade the law and do not participate in the required training.

## Appendix A – Board Members Recommended for Removal

Authority Name	Appointing Authority	Board Member Name
Brooklyn Navy Yard Development Corporation	Mayor of NYC	Thomas Montvel-Cohen
Brooklyn Navy Yard Development Corporation	Mayor of NYC	Alexander Nojovits
Business Development Corporation for a Greater Massena	Town of Massena and Village of Massena	Chris Herrick*
Columbia Tobacco Asset Securitization Corporation	Columbia County Board of Supervisors	Ronald Caponera
Columbia Tobacco Asset Securitization Corporation	Columbia County Board of Supervisors	Bernhardt Karp
Columbia Tobacco Asset Securitization Corporation	Columbia County Board of Supervisors	Rick Keaveney
Erie County Fiscal Stability Authority	NYS Governor	Peter Marlette
Geneva Local Development Corporation	Geneva City Council	Dick Conoyer*
Jamestown Urban Renewal Agency	Mayor of Jamestown	Paul Whitford
Municipal Assistance Corporation for the City of Troy	NYS Senate Majority	Daniel Hogarty
Municipal Assistance Corporation for the City of Troy	NYS Governor	Kenneth Baer
Municipal Assistance Corporation for the City of Troy	NYS Governor	Patrick Morphy
Nassau County Bridge Authority	Nassau County Executive	Russel Rosenthal
Niagara Falls Urban Renewal Agency	Mayor of Niagara Falls	Doreen O'Connor
Niagara Falls Urban Renewal Agency	Mayor of Niagara Falls	Christopher Robins
Operation Oswego County	Authority Board of Directors	Ed Gilson
Orange County Water Authority	Orange County Executive	Marc Devitt
Orange County Water Authority	Orange County Executive	Jonah Mandelbaum
Rockland Economic Development Corporation	Authority Board of Directors	Quinton VanWynen
Rockland Economic Development Corporation	Authority Board of Directors	James Tully
Rockland Economic Development Corporation	Authority Board of Directors	Rafael Espailat
West Brighton Community Local Development Corporation	Authority Board of Directors	Loretta O'Malley
Westchester County Local Development Corporation	Authority Board of Directors	Gerald McGrath

\*Resigned from the board following removal recommendation letter

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## Appendix B – Ex-Officio Board Members Not Trained

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<b>Authority Name</b>	<b>Board Member Name</b>	<b>Ex-Officio Position</b>
Oneida Tobacco Asset Securitization Corporation	Gerald Fiorini	Chair of Oneida County Legislature
Oneida Tobacco Asset Securitization Corporation	Anthony Picente	Oneida County Executive
Theater Subdistrict Council Local Development Corporation	Bill De Blasio	Mayor of NYC
Village of Rockville Centre Community Development Agency	Emilio Grillo	Village of Rockville Center Trustee
Village of Rockville Centre Community Development Agency	Michael Sepe	Village of Rockville Center Trustee
Washington County Local Development Corporation	John LaPointe	Town of Putnam Supervisor