



## **Board Member Training Compliance**

**April 3, 2017**

**GR-2017-01**

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**Purpose and Authority:**

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. We conducted a review of board member training compliance as reported in the Public Authorities Information System (PARIS). Our review was conducted from November 2016 through February 2017.

**Background Information:**

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 PARIS whether each board member has complied with the training requirement of Section 2824(2). The ABO's 2016 Annual Report issued in July 2016 reported 22 percent of public authority board members had not participated in the required training. As a result, we conducted our review to verify the accuracy of the reported data and then notified authorities of their non-compliance and requested explanations for each board member's non-compliance.

**Results:**

Our review found the number of board members reported as not attending the required training was inaccurate. After reviewing ABO training records, we determined that of the 649 board members who were reported as not attending the required training, 262 (40 percent) board members had actually attended training. The 387 board members that did not attend training were from 153 different public authorities. The majority of these directors (67 percent) are board members of not-for-profit corporations affiliated with, sponsored or created by a local government, otherwise known as local development corporations (LDCs). Eighteen percent are board members of local authorities, nine percent are

board members of industrial development agencies and six percent are board members of State authorities.

Between November 2016 and January 2017 we sent letters to 149 of the 153 authorities regarding 381 of the board members that had not attended the state approved training. As of February 28, 2017, 109 of the 149 authorities had responded to the ABO's letter. These responses addressed 236 of the 381 board members. The remaining 40 authorities have not responded in any form to the ABO's request for an explanation of the non-compliance of 145 board members.

Based on the authorities' responses, 225 of the 236 board members (95 percent) were determined not to be in compliance with the training requirement under Public Authorities Law. The other members were determined to be in compliance with Section 2824(2) or were found to have not served on the Authority board for at least one year.

Many authorities responded that the lack of compliance with board member training was an oversight and that their board members would register for upcoming training sessions. As a result, 138 board members (61 percent) have since attended board member training or have registered to attend training. The remaining 45 board members have not yet taken any action to register for training although their authority responded to the letter, and 42 board members were identified as no longer serving on their respective board.

The lack of response by public authorities and board members to comply with the training requirement under Public Authorities Law is inexcusable. Those board members that have not attended training may not have the foundation to exercise appropriate oversight and may not be adequately aware of their fiduciary responsibility to the mission of their organization, its management and staff, and to the public. The ABO will continue to pursue enforcement action to ensure all board members attend training in accordance with Public Authorities Law.

### 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. Training gives board members the foundation and tools to provide adequate oversight and ensure that the authority's operations are accountable and transparent to the public.

In 2006, following the passage of the Public Authorities Accountability Act of 2005, the Authorities Budget Office (ABO) developed a Policy Guidance on Board Member Training to assist public authorities in meeting the requirements of the Act. This Guidance allowed interested organizations to become approved trainers for purposes of the board member training. Approved trainers included the City University of New York (CUNY), Albany Law School and several law firms. These training sessions were held at various locations throughout New York State and required individual board members to travel to the training location. In 2011, the ABO discontinued its program for approved trainers and developed a comprehensive corporate governance training curriculum that is provided by ABO staff. The training is for directors and executive management of all state and local public authorities and is provided at no cost using an interactive webinar format. This eliminates the need for the attendees to travel, reducing their cost and time commitments. The training is available on a regular basis during regular business hours.

From 2006 through July 2016 more than 6,000 board members and staff have received training. Since July 2011, the ABO has provided 157 interactive online training webinars to board members, 55 of which were held during 2015 - 2016.

The ABO has subsequently updated its policy guidance on board member training (currently Policy Guidance 17-01 Board Member Training) to re-emphasize the training requirements and help ensure compliance with Section 2824(2). The Guidance states participation in training extends to all members, including voting and non-voting members, ex officio members or designees. In addition, the Guidance states it is the responsibility of the public authority to maintain appropriate documentation that each board member participated in the required training and to assure that board members are compliant with Section 2824(2).

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 of Public Authorities Law. The ABO's 2016 Annual Report issued in July 2016 reported 22 percent of public authority board members had not participated in the required training according to

PARIS data. As a result, the ABO took action to notify authorities of their non-compliance and request explanations for each board member's non-compliance. The results of this action are outlined in this report.

### **Compliance Review Objectives**

The ABO is authorized by Title 2 of Public Authorities Law to assess compliance with various provisions of Public Authorities Law and 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. The ABO also has the power to publicly warn and censure authorities for non-compliance, and to recommend suspension or dismissal of officers and directors. Our objective was to notify authorities of their board members' responsibility under the law to attend training and request a written explanation for each board member's failure to comply with Section 2824(2) of Public Authorities Law.

### **Compliance Review Scope and Methodology**

Our review was conducted between November 2016 and February 2017. We reviewed Annual Reports that had been submitted by public authorities for fiscal years ending between June 30, 2015 and June 29, 2016 as of November 4, 2016. To perform our review we also relied on ABO board member training records and training records provided by public authorities.

### **Board Member Training Compliance**

In November 2016, we reviewed the Annual Reports that had been submitted by public authorities for fiscal years ending between June 30, 2015 and June 29, 2016. Since board members have one year from their appointment to attend the training, we identified those board members whose term was reported to have started prior to November 1, 2015. We then determined those board members that were reported as not having attended State approved board member training in accordance with Section 2824(2). There were 649 board members, representing 221 public authorities that were reported as not attending training.

The results were compared to board member training records maintained by the ABO, and it was found that 262 of the 649 board members (40 percent) had actually attended the board member training. The remaining 387 board members representing 153 different public authorities were identified as not having attended the required training program.

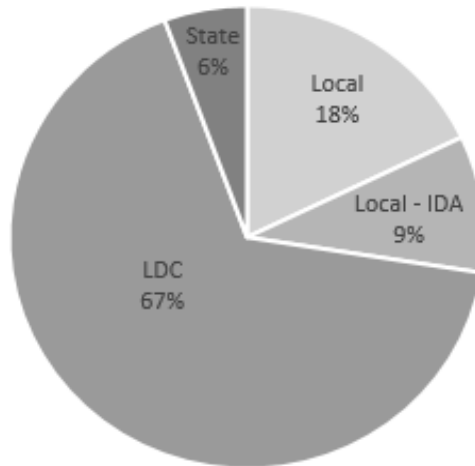
While it is the board members' responsibility to attend the required training, public authorities are expected to have procedures in place to encourage and ensure that board members actually attend the training sessions. ABO guidance requires the public authorities to maintain records of attendance and to report whether each current board member has attended the training. Yet on average over 26 percent of public authorities have a board member that has not attended training. This percentage could be higher since not all authorities submitted their Annual Report for 2015.

| <b>Type of Authority</b> | <b>Total Number of Authorities*</b> | <b>Number of Authorities With Board Members That Have Not Been Trained</b> | <b>Percentage of Total</b> |
|--------------------------|-------------------------------------|--|----------------------------|
| State authorities        | 47                                  | 15   | 31.9%                      |
| Local authorities        | 108                                 | 30   | 27.7%                      |
| IDA                      | 109                                 | 21   | 19.2%                      |
| LDC                      | 313                                 | 87   | 27.7%                      |
| Totals                   | 577                                 | 153  | 26.5%                      |

\*Per the 2016 ABO Annual Report

Of the 387 board members that had not attended the required training, the majority of the board members (67 percent) are members of not-for-profit corporations affiliated with, sponsored or created by a local government, referred to as local development corporations (LDCs). Eighteen percent are board members of local authorities, nine percent are board members of industrial development agencies and six percent are board members of State authorities.

## Untrained Board Members By Authority Type



In addition, twelve of these board members were reported as serving on their respective board for more than 20 years, and 46 were reported as serving on their respective board for more than 10 years. For example, two board members from the Municipal Assistance Corporation for the City of Troy were reported as serving on the State authority board since 1995, yet have never attended the training that has been mandated since 2006. Further, one board member from the Oswego County Industrial Development Agency has served on the board since 1995 and another has served on the board since 1999. Neither board member has attended the mandatory training.

### Notification Letters

Between November 2016 and January 2017, we sent letters to 149 of the 153 authorities with board members that were confirmed to be non-compliant with the training requirement under Section 2824(2) of Public Authorities Law. We had recently reviewed the operations of the Eastern Rensselaer County Solid Waste Management Authority and identified the lack of training by board members in that report, rather than issue a letter under this project. Three other authorities did not receive letters because either the board member was no longer on the board or had attended training because of a letter sent to another authority for which the individual was also a board member. The letters addressed 381 of the 387 individual board members identified as not attending the required training program.

We requested each authority to provide a written explanation for each board member's failure to comply with Section 2824(2) of Public Authorities Law, as well as to develop an appropriate action plan to ensure that all board members complied with the training requirement within one year of their appointment on an ongoing basis. All responses were due within 30 days. If the Authority determined the failure to attend training was a reporting error, then we requested the Authority

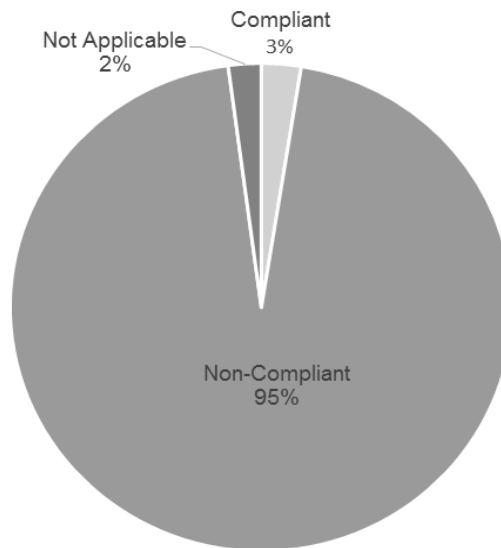


to provide documentation supporting the board member attended State approved training. These responses were due within 14 days.

As of February 28, 2017, 109 of the 149 authorities had responded to the ABO’s training compliance letter relating to 236 board members. The remaining 40 authorities have not responded in any form to the ABO’s request for an explanation for the non-compliance of 145 board members. See Appendix A for a list of the 40 authorities.

Based on the authorities’ responses for each board member, as seen in the chart below, 225 of the 236 board members (95 percent) were determined to be noncompliant with the training requirement under Public Authorities Law. Six board members of four different authorities attended training provided by one of the previously approved trainers, and were determined to be in compliance with Section 2824(2). Five board members were found to have not served on the respective Authority board for at least one year. Although training should be attended within the first year of a board member’s appointment, board members that did not serve a full year before leaving the board were considered “not applicable” in the table below.

Results of Board Member Responses



### Authority Action Plans

Of the 225 board members that were determined non-compliant with the training requirements, 42 board members were indicated as no longer serving on their respective board. Many authorities responded that the lack of compliance with board member training was an oversight and that their board members would register for upcoming training sessions. As a result of our review, 138 board

members (61 percent) have attended recent board member training sessions or are registered to attend an upcoming training session. The remaining 45 board members have not taken any action to register for training although their authority responded to the letter.

Board Member Actions Taken Towards Compliance



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## **Conclusion and Recommendation**

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The purpose of training is to prepare individuals to understand and properly execute their role as board members and to be well-versed in the principles of corporate governance and the requirements of the law. Those board members that have not attended training may not have the foundation to exercise appropriate oversight and are not adhering to the fiduciary responsibility they have to the mission of their organization, its management and staff, and to the public.

We recommend that all public authorities establish policies and procedures that ensure board members are trained within one year of appointment, including tracking and documenting each board members completion of training. In addition, Public Authorities Law requires directors to participate in continuing training to “remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.” Therefore as a best practice, the ABO recommends that directors participate in training upon re-appointment to the Board or at least every three years.

We commend those board members that have taken action to attend State approved board member training in accordance with Section 2824(2) of Public Authorities Law. However, the lack of compliance with the training requirement by other members is inexcusable. The ABO will continue to pursue enforcement action, including potential censure and removal, to ensure all board members attend training in accordance with Public Authorities Law.

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## Appendix A

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### **Authorities that failed to respond to the ABO Training Compliance Letter**

Albany County Land Bank Corporation\*  
Broome Tobacco Asset Securitization Corporation  
Business Development Corporation for a Greater Massena  
City of Troy Capital Resource Corporation  
Columbia Tobacco Asset Securitization Corporation  
Development Chenango Corporation  
Dormitory Authority of the State of New York  
Erie County Fiscal Stability Authority  
Golden Hill Local Development Corporation  
Griffiss Local Development Corporation  
Housing Trust Fund Corporation  
Hudson Industrial Development Agency  
Jefferson County Civic Facility Development Corporation  
Long Beach Local Development Corporation  
Madison County Capital Resource Corporation  
Middletown Community Development Agency  
Nassau County Bridge Authority  
New York City School Construction Authority  
New York State Affordable Housing Corporation  
New York State Housing Finance Agency  
NFC Development Corporation  
Niagara Falls Urban Renewal Agency  
North Greenbush Industrial Development Agency  
Oneida Tobacco Asset Securitization Corporation  
Oswego County Civic Facilities Corporation  
Rockland Economic Development Corporation  
State of New York Mortgage Agency  
State of New York Municipal Bond Bank Agency  
Theater Subdistrict Council Local Development Corporation  
Town of Montgomery Industrial Development Agency  
Town of Moreau Local Development Corporation  
Trust for Cultural Resources of the City of New York  
Tuxedo Farms Local Development Corporation  
Utica Harbor Point Local Development Corporation  
Village of Rockville Centre Community Development Agency  
Washington Tobacco Asset Securitization Corporation  
Water Authority of Southeastern Nassau County  
White Plains Center Local Development Corporation  
White Plains Urban Renewal Agency  
Yates Tobacco Asset Securitization Corporation

**\*Albany County Land Bank Corporation responded to our letter subsequent to February 28, 2017 and the results were not incorporated within this report**