

Minimum Requirements for Libraries and Library Systems in New York State

“Conflict of Interest” and “Whistleblower” Policies

Sections 715-a and 715-b Not-for-Profit Corporation Law (NPCL)

The State of New York enacted Sections 715-a and 715-b of the Not-for-Profit Corporation Law (NPCL) as part of the *Non-profit Revitalization Act of 2013* (Chapter 549 of the Laws of 2013). The Act applies to corporations subject to the Not-for-Profit Corporation Law, including those incorporated with the Department of State or formed as education corporations by Regents Charter or by Special Legislative Act, and as such, library and library system boards of trustees are now required to adopt a “conflict of interest” policy and, in some instances, a “whistleblower” policy. These requirements became effective on July 1, 2014.

The “conflict of interest” policy requirement applies to:

- association libraries,
- public libraries,
- public library systems, and
- reference and research library resources systems.

The “whistleblower” policy requirement applies only to those above libraries and systems that meet BOTH of the following requirements:

- have twenty or more employees, AND
- in the prior fiscal year had annual revenue in excess of one million dollars.

A brief description of the minimum requirements for each such policy is as follows:

Conflict of Interest policy that includes, at a minimum:

- (i) a definition of the circumstances that constitute a conflict of interest;
- (ii) procedures for disclosing a conflict to the audit committee or, if no audit committee, to the board;
- (iii) a requirement that the person with the conflict not be present at or participate in board/committee deliberation or vote on the matter giving rise to the conflict;
- (iv) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to the conflict;
- (v) a requirement that the existence and resolution of the conflict be documented in the corporation’s records, including in the minutes of any meeting at which the conflict was discussed or voted upon; and
- (vi) procedures for disclosing, addressing, and documenting related party transactions in accordance with NPCL §715.

Whistleblower policy that includes:

- (i) A provision that no director (or trustee), officer, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence;
- (ii) Procedures for reporting violations or suspected violations of law or corporate policies, including procedures for preserving the confidentiality of reported information;
- (iii) A requirement that an employee, officer or director of the corporation be designated to administer the policy and report to the audit committee or other committee of independent directors, or if none, to the board; and
- (iv) A requirement that a copy of the policy be distributed to all directors, officers, employees and to volunteers who provide substantial services to the corporation.

The full text of Sections 715-a and 715-b of the Not-for-Profit Corporation Law (NPCL) are posted at:

<http://www.nysl.nysed.gov/libdev/excerpts/npc715a.htm>

<http://www.nysl.nysed.gov/libdev/excerpts/npc715b.htm>

For helpful information on developing new policies, libraries are encouraged to contact their public library system. In addition, the Library Trustees Association of New York State offers a library policy database at <http://www.librarytrustees.org/policies.php>; ALA's United for Libraries has sample conflict of interest and whistleblower policies at: <http://www.ala.org/united/trustees/orgtools/policies> and the New York Library Association (NYLA) provides sample library policies at <http://www.nyla.org/>.

Source: New York State Library, New York State Education Department, July 10, 2014