

## PROCEDURE

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<b>Series:</b>	<b>Public Relations</b>	<b>COA:</b> RPM 2.01; ETH 3, 3.01, 3.05; GOV 6; FIN 2, 3, 4 <b>CFOP:</b>
<b>Procedure Name:</b>	Excess Benefit Transactions	
<b>Procedure Number:</b>	PBR-3004	
<b>Reviewed Date:</b>	02/19/13, 08/05/14, 10/13/16, 10/4/2019	
<b>Revision #/Date:</b>	N/A	
<b>Effective Date:</b>	01/01/09	
<b>Applicable To:</b>	Brevard Family Partnership Family of Agencies (BFP FOA), Brevard C.A.R.E.S., Family Allies, and The National Center for Innovation and Excellence	

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SUBJECT: Prevention of excess benefit transactions.

PURPOSE: To establish a procedure to define and prevent excess benefit transactions from occurring at Brevard Family Partnership, Brevard C.A.R.E.S., Family Allies and The National Center for Innovation and Excellence through fund raising ventures or other business transactions.

### References

BFP Policies/Procedures: GOV-202, GOV-205, GOV-208  
Brevard C.A.R.E.S. Policies/Procedures: GOV BC1009, GOV BC1014, OP BC1031, OP BC1032  
IRS Form 990  
IRS Form 4720

### Definitions

Benefit/Compensation: All financial transaction, including:

- Payments as an employee (whether reported in a W-2 or not)
- Payments as an independent contractor (whether reported in a 1099 or not)
- Revenue-sharing models
- Severance pay
- Transfer of property
- Payment of insurance premiums
- “Perks” (such as dinners, entertainment, spouse’s travel costs, etc)

Disqualified Person: Someone in a decision-making position over a non-profit organization. Examples included anyone who has had substantial influence over the non-profit organization within the past five years, including, but not limited to:

- The executive director/chief executive officer of the organization
- The organization’s financial manager/accountant
- A substantial contributor
- An officer, director, or trustee or other voting member of the governing body
- Substantial owner of a business that is a major contributor

- A family member (spouse, child, grandchild, or great-grandchild) of any of the above
- The founder, even if not directly involved with the organization
- A department head, project manager, or other high-level employee

**Excess Benefit Transaction:** This occurs when the benefits or compensation received by a disqualified person exceeds the value of that person's contribution. In other words, excess benefits means paying someone more than they are worth.

**Fair Market Value (FMV):** The value of a property between a willing buyer and seller, neither of which must buy or sell the property or use of the property. Reference procedure PBR3006, Fair Market Value Measurements.

IRS: Internal Revenue Service

### **Scope**

This procedure applies to all fund-raising ventures and other business transactions of BFP FOA. Responsibility for the daily management of BFP's fund raising is delegated to the Administration Department (AD) under the direction of the Chief Financial Officer (CFO).

Public Affairs establishes and maintain written procedures for the promotion of fund-raising activities consistent with governance policy GOV-205, Fundraising Management. Such procedures shall include explicit delegation of authority to persons responsible for these functions.

### **Procedure**

An excess benefit transaction can occur in an exchange of compensation and other compensatory benefits in return for the services of a disqualified person, or in an exchange of property between a disqualified person and the applicable tax-exempt organization.

Brevard Family Partnership, Brevard C.A.R.E.S., Family Allies, and The National Center for Innovation and Excellence will not knowingly provide any excess benefit transactions. To assist in preventing this type of activity, BFP will abide by the following process:

For property: Applicable BFP personnel will make sure the cost of the property or the cost of using the property is the FMV. Within the guidelines mandated by the Board of Directors in governance policy GOV-205, Fundraising Management, Finance staff will determine the FMV of the goods or services as outlined in procedure PBR3006, Fair Market Value Measurements.

For pay: Applicable BFP personnel will make sure that the salary and benefits offered at BFP are comparable to what other, similar-sized nonprofits in the same geographic area are paying similarly ranked employees. A compilation of this data at BFP will be part of the total Salary Administration program administered by the Human Resources Department under the direction of the Chief Executive Officer with oversight provided by the Board of Directors.

To determine if an excess benefit transaction occurred, include all consideration and benefits exchanged between or among the disqualified person and the applicable tax-exempt organization and all entities it controls.

An excess benefit transaction occurs on the date the disqualified person received the economic benefit from the applicable tax-exempt organization for federal income tax purposes. However, when a single contractual arrangement provides for a series of compensation payments or other payments to a disqualified person during the disqualified person's taxable year, any excess benefit with respect to these payments occurs on the last day of the disqualified person's taxable year.

### Correcting an Excess Benefit Transaction

If an excess benefit transaction occurs, Brevard Family Partnership, Brevard C.A.R.E.S., Family Allies, and The National Center for Innovation and Excellence will require the transaction to be corrected as soon as possible. The correction will be completed per the IRS requirement that the disqualified person correct this transaction by undoing the excess benefit to the extent possible, and by taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards. The organization is not required to rescind any underlying agreement; however, the parties may need to modify an ongoing contract with respect to future payments.

To do this, a disqualified person will make a payment in cash or cash equivalents equal to the correction amount to the applicable tax-exempt organization. The correction amount equals the excess benefit plus the interest on the excess benefit. The interest rate may be no lower than the applicable Federal rate. There is an anti-abuse rule to prevent the disqualified person from effectively transferring property other than cash or cash equivalents.

With the agreement of the applicable tax-exempt organization, a disqualified person may make a payment by returning the specific property previously transferred in the excess benefit transaction. The return of property is considered a payment of cash (or cash equivalent) equal to the lesser of:

- The FMV of the property on the date the property is returned to the organization, or
- The FMV of the property on the date the excess benefit transaction occurred.

If the payment resulting from the return of property is less than the correction amount, the disqualified person must make an additional cash payment to the organization equal to the difference.

If the payment resulting from the return of the property exceeds the correction amount, the organization may make a cash payment to the disqualified person equal to the difference.

In turn, Brevard Family Partnership, Brevard C.A.R.E.S., Family Allies, or The National Center for Innovation and Excellence will complete the IRS form number 4720 to promptly notify the IRS of the excess benefit transaction and subsequent measures to correct the error.



BY DIRECTION OF THE CHIEF EXECUTIVE OFFICER:

A handwritten signature in blue ink that reads "Philip J. Scarpelli".

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PHILIP J. SCARPELLI  
Chief Executive Officer  
Brevard Family Partnership Family of Agencies

DATE: 2/1/2020