

SARBANES OXLEY COMPLIANCE

The Sarbanes Oxley Act of 2002 was adopted by Congress to address the national consensus that for-profit corporations were not sufficiently regulated as to their financial management and public disclosures through previously existing laws. A number of highly publicized financial failures of multinational corporations, shrouded in corporate and accounting scandals, led to these conclusions.

While the Sarbanes Oxley Act is specifically limited to the regulation of publicly traded companies, the legislative intent of re-establishing public confidence in the integrity of the financial management and auditing of corporations is also an important message for non-profit entities.

The highlights of the Act are:

A. Auditor Independence

1. Non-audit functions of the accounting firm performing the annual audit should be limited or eliminated. Prohibited functions include bookkeeping, information systems design, appraisals, actuarial services, investment advice or management, and human resource services.
2. All services of the auditor must be approved by an Audit Committee.
3. Lead audit partners of the auditing firm must rotate at least every five years.
4. The auditor must report to the Audit Committee on all critical accounting policies and practices discussed with management, all alternative treatments of financial information, and all written communications with management.
5. No revolving door of highly placed management executives to audit company.

B. Corporate Responsibility

1. Audit Committee must be composed of board members with no employment or financial link to the enterprise and at least one member must be a financial expert.
2. Audit Committee is directly responsible for all aspects of the engagement of an auditor.
3. Audit Committee must have authority to engage independent counsel and other advisors as needed.
4. Audit Committee must establish procedures for complaints, anonymous or known, to be submitted directly to the Committee, if regarding financial management.
5. CEO and CFO personal certification of the annual audit report accuracy required.
6. CEO and CFO must assess internal controls within 90 days prior to the annual report.
7. No officer or director may influence, mislead, or coerce an auditor.

8. CEO and CFO must reimburse to the company any bonus or incentive compensation if a restatement of the financial statement is subsequently required.

C. Enhanced Financial Disclosure

1. Off-balance sheet transactions were to be studied by SEC.
2. Annual Report must include an internal control report, assessing the effectiveness of internal control structure(s).
3. Requires plain disclosure of any applicable code of ethics for management.

While these statutory mandates do not apply to Shepherd University, a growing number of non-profits, including many colleges and universities, are implementing “Sarbanes-Oxley Best Practices.” This term refers to a generally flexible process of adapting the core principles of the Act into the institution’s policies and procedures. In the last session of the West Virginia Legislature, the new “Flexibility Bill” included Sarbanes-Oxley Best Practices compliance as an expectation for any other institution that would seek to qualify for future inclusion in the flexibility provisions.

Shepherd University already operates in substantial compliance with a number of these principles. It is recommended that the President and appropriate staff work with the Board’s Executive Committee to develop Shepherd’s adoption of Best Practices in this area.