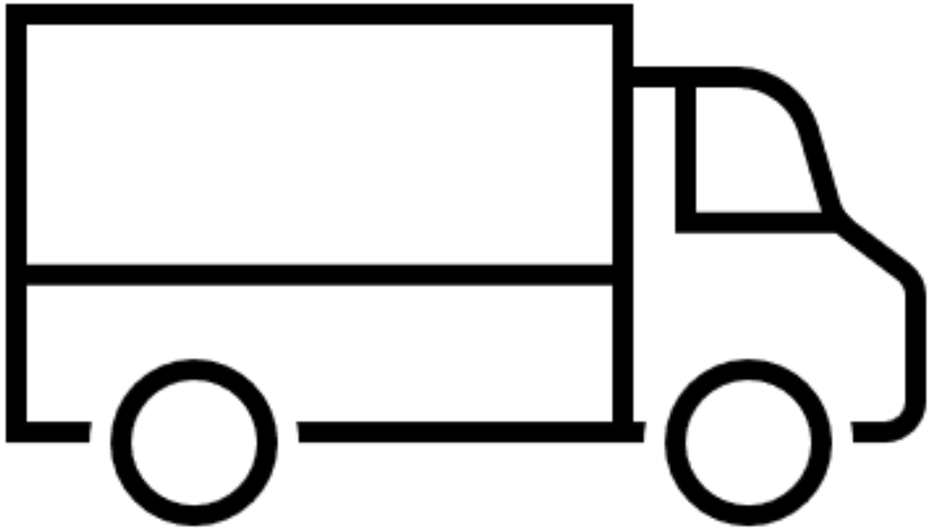
BUSINESS ENTITIES

JOINT VENTURE, COOPERATIVES AND NON-PROFITS



- Quick Review: Agency Law
- Jerry owns a restaurant. He has a staff that helps him with the cooking, cleaning, and delivery. His delivery truck broke down. He hires Ian to fix the truck. Ian is not his employee but can act as his agent in reference to anything that has to do with fixing the truck. If Ian gets into an accident, or commits a misfeasance, Jerry will not be vicariously liable for any of his acts.
- However, when out delivering an order, Jerry's delivery person (Doug) drops an order of hot soup on the ground. That soup burns a person passing by. Is Jerry liable for Doug's accident if the passerby sues?

GOODWILL:

Goodwill is the premium that is paid when a business is acquired. If a business is acquired for more than its book value, the acquiring business is paying for intangible items such as intellectual property, brand recognition, skilled labor, and customer loyalty.

- **What Is a Joint Venture (JV)?**
- A joint venture (JV) is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity.
- Each of the participants in a JV is responsible for profits, losses, and costs associated with it. However, the venture is its own entity, separate from the participants’ other business interests.

JVs vs. Partnerships and Consortiums

A JV is not a partnership. That term is reserved for a single business entity that is formed by two or more people. JVs join two or more different entities into a new one which may or may not be a partnership.
A+B=1

Reasons to Enter into a JV:

1.Leverage Resources: A JV can take advantage of the combined resources of both companies to achieve the goal of the venture. One company might have a well-established manufacturing process, while the other company might have superior distribution channels.

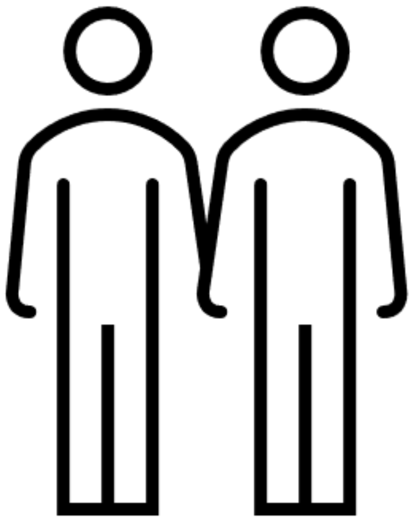
2. Reduce Costs: By using economies of scale, both companies in the JV can leverage their production at a lower per-unit cost than they would separately. This is particularly appropriate with technology advances that are costly to implement. Other cost savings can include sharing advertising or labor costs.

JV Reasons to Enter(Cont.)

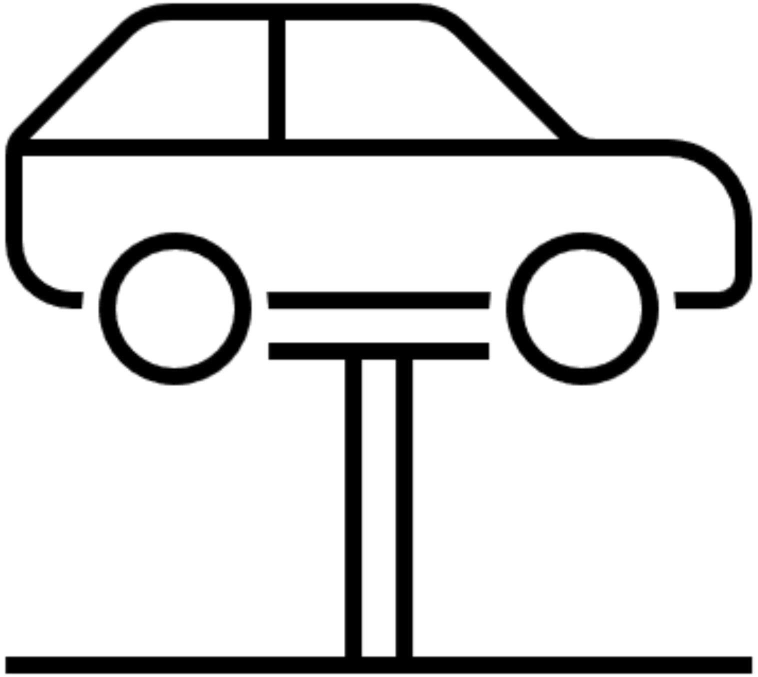
3. Combine Expertise: Two companies or parties forming a JV might each have different backgrounds, skill sets, or expertise. When these are combined through a JV, each company can benefit from the other's talent.

4. Enter Foreign Markets: Another common use of JVs is to partner with a local business to enter a foreign market. A company that wants to expand its distribution network to new countries can enter into a JV agreement to supply products to a local business, thus benefiting from an already existing distribution network.

- Which one is **NOT** a reason to enter into a JV?
    A. Leverage Resources
    B. Enter Foreign Markets
    C. Form a solid partnership
    D. Reduce costs



- Some countries have restrictions on foreigners entering their market, making a JV with a local entity almost the only way to do business in the country.



JV Example:

- Car manufacturer BMW formed a joint venture with the Chinese Automobile manufacturer Brilliance Auto Group in 2003. The venture, named BMW Brilliance, was formed to produce and sell BMW cars in China.
- The partners jointly agreed to invest €450 million in the venture, with BMW taking a 50% stake in the child company while Brilliance Auto took a 40.5% stake. The remaining 9.5% went to the Shenyang municipal government.

JV Example (Cont.)

This example of a horizontal joint venture was brought about due to laws in China requiring that manufacturing operations be at least 50% Chinese owned. However, China has since begun eliminating this requirement for automobiles and in 2018, BMW subsequently announced its plans to increase its stake in BMW Brilliance to 75% (as reported by Green Car Congress). This makes BMW the first foreign car manufacturer to take control of its joint venture in China.

- Can you give me an example, if any, of a JV similar to the BMW/ Brilliance JV that took place in Russia?

Pros and Cons of a JV:

PROS:

1. A joint venture gives each party the opportunity to exploit a new business opportunity without bearing all of the cost and risk. Joint ventures by nature are riskier than "business as usual" and sharing the risk is a wise move.

PROS (Cont.)

2. If the right participants are involved, the joint venture also starts out with a broader base of knowledge and pool of talent than any one party possesses on its own. For example, a joint entertainment venture set up by an animation studio and a streaming content provider can get off the ground more quickly and probably with a better chance of success than either participant could alone.

Cons to Starting a JV:

1. Embarking on a joint venture requires relinquishing a degree of control. The vital decisions are being made by two or more parties.

2. The companies involved must go into the project with the same goals and an equal degree of commitment.

3. Setting up a joint venture multiplies the number of management teams involved. If one party undergoes a significant change in its business structure or executive team, the joint venture can get lost in the shuffle.

JV Cons (Cont.)

4. Extreme differences between the participants' company cultures and management styles can be a barrier to success. Will the executives of an animation studio be able to communicate in the same language as the executives of a digital streaming giant? They might, or they might line up in opposing camps.

How to Set up a JV:

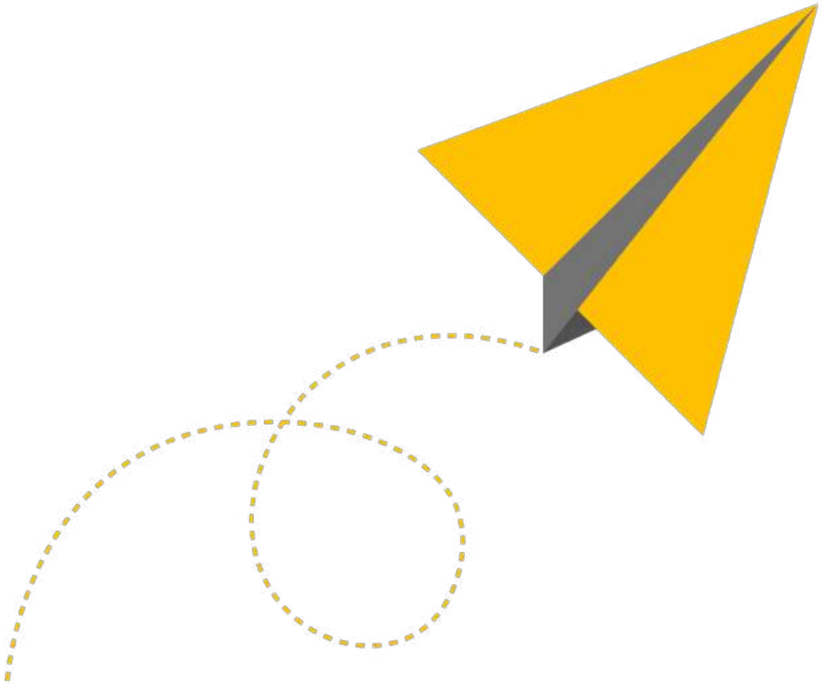
Regardless of the JV structure, the most important document will be the agreement that sets out all of the rights and obligations of each party to the venture. The objectives, the initial contributions of the parties, the day-to-day operations, the right to the profits, and the responsibility for losses are all set out in the JV agreement. It is important to draft it with care to avoid risking litigation down the road.

What Is a Consortium?

A consortium is a group made up of two or more individuals, companies, or governments that work together to achieving a common objective. Entities that participate in a consortium pool resources but are otherwise only responsible for the obligations that are set out in the consortium's agreement. Every entity that is under the consortium, therefore, remains independent with regard to their normal business operations and has no say over another member's operations that are not related to the consortium.

Consortiums (Cont.)

Consortiums are often found in the non-profit sector, for example, among educational institutions. Educational consortiums often pool resources such as libraries, research activities, and professors and share them throughout the members of the group to benefit their students. Several groups of North American colleges and universities operate as consortiums.



- **Consortiums and For-Profit Businesses**
- Corporate for-profit consortiums also exist, but they are less prevalent. One of the most famous for-profit consortiums is the airline manufacturer Airbus Industrie GIE. European aerospace manufacturers collaborate within the consortium to produce and sell commercial aircrafts.

- **Consortiums and Government**
  - Governments and private enterprises often collaborate to formulate standards for manufacturing, food production, product compatibility, consumer safety, and more. In such collaborations, a government leverages its buying power as a consumer to create standards.

Is a consortium and a JV the same thing? If no, what is the main difference?

- **Business Cooperative**(s):
- Business Cooperative: is a unique business entity that is democratically controlled by its members who are limited to one vote regardless of how many shares of the corporation a member owns.
- The purpose of a cooperative is to realize the economic, cultural and social needs of the organization's members and its surrounding community

Reasons to Start a Business Cooperative:

1. Provide employment opportunities
2. Investment opportunities
3. Collaborative growth
4. Even distribution of wealth
5. Expand new and existing market opportunities
6. Improve product or service quality
7. Decrease costs

Cooperative Business Models:

Cooperative Business Principles: The differences between cooperatives and other businesses are often expressed as three broad principles that characterize all cooperatives and explain how they operate.

Cooperative Business Models (Cont.):

They are:

1. **The user-owner principle**. The member-users own and provide the necessary financing. Members finance cooperatives in several different ways.

2. **The user-control principle**. The member-users control the business. They elect the board of directors and approve changes in its structure and operation. The board sets policy and is responsible for business oversight.

Cooperative Business Models (Cont.):

3. **The user-benefit principle**. Assures that the cooperative's only purpose is to provide and distribute benefits to members based on their use. Benefits may include a service otherwise not available, advantages from volume purchasing or sales, or distribution of profits based on member use of the cooperative.

TYPES OF COOPERATIVES:

1. Retail Cooperatives Retail Cooperatives are a type of "consumer cooperative" which help create retail stores to benefit the consumers making the retail “our store”. They allow consumers the opportunity to supply their own needs, gain bargaining power, and share earnings. They are organized as communities, or other “local groups”, owning their own retail stores. Retail cooperatives are often found in small communities where local businesses have shut down. *Examples: hardware, food, agriculture products, and even movie theaters.*

TYPES OF COOPERATIVES (Cont.)

2. **Worker Cooperatives**: Members of worker cooperatives are both employees of the business as well as owners of the cooperative. This is one of the fastest growing segments of cooperatively owned businesses. Possibilities for being organized as a worker cooperative include: New business start-ups, entrepreneurs sharing highs & lows of business, or a conversion of existing businesses. *Examples: bakeries, retail stores, software development groups, and aquaculture*.

Larger companies also have the option of Employee Stock Ownership Plans (ESOPs). This means employees will own a stake in the business, allowing for similar types of democracy in the workplace.

- **TYPES OF COOPERATIVES (Cont.)**

- **3. Service Cooperatives:** Service cooperatives are a type of "consumer cooperative" which help to fill a need in the community. They allow consumers the opportunity to supply their own needs, gain bargaining power, and share earnings. They are organized to give members more control over the services that are offered. *Examples: service co-ops such as childcare, health care clinics, and funeral services.*

•TYPES OF COOPERATIVES (Cont.)

•**4. Housing Cooperatives:** Housing cooperatives are a type of service cooperative which provide a unique form of home ownership. They allow homeowners the opportunity to share costs of home ownership (or building). They are organized as an incorporated business formed by people who wish to provide and jointly own their housing. The units in a housing co-op are owned by the cooperatives, and in some cases cannot be sold for profit. *Examples include: apartments, rentals, single-family homes, market rate, and limited equity.*

What does the cooperative landscape look like in Russia? What is the most popular cooperative model?

Here are 10 important steps in organizing a cooperative:

1. Hold an exploratory meeting with others who have a similar interest and determine whether you have common needs and desire to address those needs as a group.
2. Select a steering committee to guide the group through the formation process.
3. Conduct a survey of potential members.
4. Analyze markets for products, supplies, and services;
5. Prepare a business plan.

Here are 10 important steps in organizing a cooperative (Cont.):

6. Incorporate the business.
7. Adopt bylaws and select a board of directors.
8. Find investment funds-including member investment needed to carry out the business plan.
9. Hire management and employees and acquire facilities and equipment.
10. Begin operations.

What Is a Nonprofit Organization?

A nonprofit organization is a business that has been granted tax-exempt status by the Internal Revenue Service (IRS) because it furthers a social cause and provides a public benefit. Donations made to a nonprofit organization are typically tax-deductible to individuals and businesses that make them, and the nonprofit itself pays no tax on the received donations or on any other money earned through fundraising activities. Nonprofit organizations are sometimes called NPOs or 501(c)(3) organizations based on the section of the tax code that permits them to operate.

- **Non-Profit v. Not For Profit**
- Difference between *non-profit* and **not for profit**: A key is their purpose. As mentioned, nonprofits must offer some social benefit and provide goods or services. Not-for-profits need not have such an orientation and may exist simply to serve their membership rather than society at large. Example: A neighborhood football club.

Nonprofit Funding Sources

Nonprofits may receive income or donations from a variety of sources. Some of the most common ways nonprofits fundraise and earn revenue:

1. **Individual Donations**

Nonprofits often rely on individual donors who contribute money, goods, or services to support their mission. Donors can give one-time or recurring donations, and they may give through various channels, including online platforms, direct mail, or events.

Nonprofit Funding Sources (Cont.)

2. **Grants**

Nonprofits may receive grants from foundations, corporations, or government agencies. Grants are typically awarded for specific projects or programs and may require the nonprofit to meet certain conditions or reporting requirements. Nonprofits usually have to apply for the grant which requires an extensive application process.

•Nonprofit Funding Sources (Cont.)

•3. **Corporate Gifts**

•Corporations may donate money, goods, or services to nonprofits as part of their corporate social responsibility initiatives or to support causes that align with their values or mission.

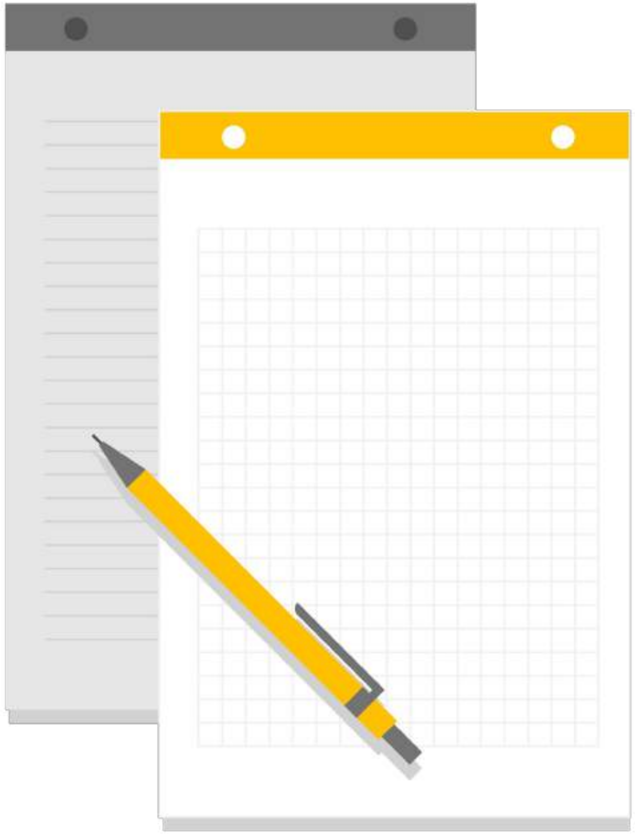
- **Nonprofit Funding Sources (Cont.)**

4**. Major Events**

Nonprofits often host events such as galas, auctions, or charity runs to raise money and awareness for their cause. These events may involve ticket sales, sponsorships, or auctions of goods or services.

- **Nonprofit Funding Sources (Cont.)**

- 5. **In-Kind Donations**
- Nonprofits may receive donations of goods or services such as office supplies, equipment, or professional services. Instead of individuals or companies donating money, it may be more efficient to have specific goods donated instead.



- Name three non-profit funding sources?

Nonprofits and Form 990

Nonprofits are tax-exempt entities. However, they are still required to file informational returns to the IRS using Form 990. This tax form provides information about the organization's finances, programs, and activities to the public and the IRS. The form is used by charitable, religious, educational, and other types of tax-exempt organizations. Private foundations, charitable trusts, and political organizations also must file a Form 990.

PROs of Non-Profits:

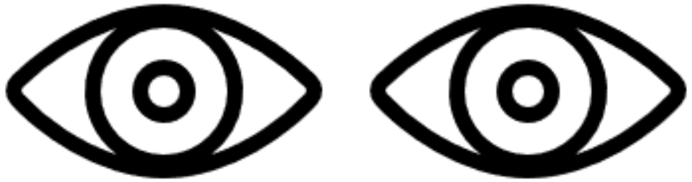
- Focused on a specific mission that improves the well-being of its community.
- Is exempt from taxes, allowing for resources to be deployed more efficiently.
- May have a broad range of funding and donation sources.
- Often rely on volunteers for labor. (Sometimes) Many large non-profits in the U.S. have paid staff.

CONS of Non-Profit:

- May have unpredictable revenue streams due to changes in donor preferences and abilities.
- Must comply with regulations and donor stipulations.
- Often face competitive disadvantage when hiring compared to for-profit entities.

- What is the PRIMARY benefit of non-profit creation?

- Overseeing a Non-Profit:
- Board members are the fiduciaries who steer the organization towards a sustainable future by adopting sound, ethical, and legal governance and financial management policies, as well as by making sure the nonprofit has adequate resources to advance its mission.



- **BOARDS**
- Managing Board: Oversees the day-to-day operations of the company. Meet more frequently than for-profit board.
- Advisory Board: Are assembled for a particular purpose. For example, if a non-profit is having a gala, they would assemble a group of people to organize this gala. When the gala is over, the advisory board is dismantled.

Board Fiduciary Duties Include:

Duty of Care: Take care of the nonprofit by ensuring prudent use of all assets, including facility, people, and good will;

Duty of Loyalty: Ensure that the nonprofit's activities and transactions are, first and foremost, advancing its mission; Recognize and disclose conflicts of interest; Make decisions that are in the best interest of the nonprofit corporation; *not in the best interest of the individual board member* (or any other individual or for-profit entity).

- **Board Fiduciary Duties Include:(Cont.)**

- **Duty of Obedience**: Ensure that the nonprofit obeys applicable laws and regulations; follows its own bylaws; and that the nonprofit adheres to its stated corporate purposes/mission.

- YES! Non-Profits Merge and Acquire.
- Usually in the medical or education sectors.

- Before we start why do you think a non-profit merger or acquisition is less intense than a for-profit merger or acquisition?

Here is what nonprofits should consider when thinking about M&A:

1. SWOT: What are the strengths of the organization? And what are the weaknesses? Ideally, the partner in the merger should map their strengths and weaknesses oppositely, adding value and capacity where there are gaps. Both entities should undergo this exercise independently and meet to share results. **Example ABC company is strong here and XYZ company is weak here**. (Strength, Weakness, Opportunities & Threats)

Here is what nonprofits should consider when thinking about M&A: (Cont.)

2. **Mission Alignment:** What is the overarching mission and vision for both organizations? Are they similar enough that nothing is being changed to this regard? Ideally, they should stay the same, even post-merger. Otherwise, the merger may not make sense.

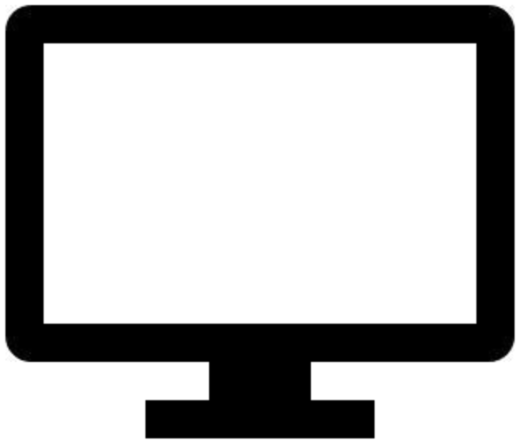
Here is what nonprofits should consider when thinking about M&A: (Cont.)

3. Founder Transitions: Founding and running a nonprofit is incredibly hard work. Merging gives the acquired founder a graceful exit and an opportunity to start fresh and prevent burnout.

- Here is what nonprofits should consider when thinking about M&A: (Cont.)
- **4. Culture:** What are the cultures of both entities? Hierarchical or flat? Startup environment or established? Centralized or distributed? Will the transition be comfortable or rocky?

- Here is what nonprofits should consider when thinking about M&A: (Cont.)

- **5. Technology And Policy:** What technology platforms are each of the organizations using? How big of a lift will it be to onboard the acquired entity to the new organization? What changes in human resources and staff policies, even down to vacation time and bonus structure, need to be conveyed?



Here is what nonprofits should consider when thinking about M&A: (Cont.)

6. Stakeholders: There are a lot of stakeholders involved with nonprofits. This includes the board of directors, donors, partners, beneficiaries and the staff themselves. Ensuring everyone is on the same page with the merger and not leaving any voice out is critical for success. In some nonprofit M&A cases, the board may have a lot of input and require a lot of resources for their vote, and the entities should be prepared to provide those resources to their board ahead of time.

- Russia and non-profits what can you tell me?

- Non-Profit Fun Facts:

- In 2022, the nonprofit organization in the U.S. with the highest paid CEO was Sentara Health, with an estimated salary of 33.22 million U.S.

- Lutheran Services in America- Richest Non-Profit

  Founded just 25 years ago, the nonprofit's network is worth over $23 billion and in terms of revenue, is the highest earning nonprofit company in the USA.

- Harvard University is a non-profit. Its president’s salary is $879,000.

THE END

REFERENCES

1. https://www.rd.usda.gov/sites/default/files/cir50.pdf