

Executive Compensation, Wage and Salary and Incentive Design in the New Economy

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Wednesday Webinars
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Lawrence Associates
Compensation Consultants

Overview of Webinar

- Executive Compensation
- Wage and Salary
- Incentive/ Bonus Design

Webinar Housekeeping

- If you have questions, please submit them in writing using the Question Box. We will answer them as we go along, if possible, or at the end.

Who is in our Audience?

Poll - Industry Sector

1. Arts, Museums
2. Associations
3. Faith-based
4. Foundations
5. Healthcare
6. Higher Education/Schools
7. Human Services
8. Legal, Accounting, Other Advisors
9. Other Nonprofit

Who is in our Audience?

Poll - Role in Organization

1. Trustee/Board Member
2. CEO/President/Executive Director
3. Executive
4. Staff
5. Finance
6. Human Resources
7. Consultant/Attorney/Other Advisor

What topics are of greatest interest to you?

Poll - Presentation

Topic

1. Executive Compensation
2. Wage and Salary Trends
3. Incentive Design

Style

4. Legal/Policy Overview
5. Detail
6. Case Examples

Breaking News

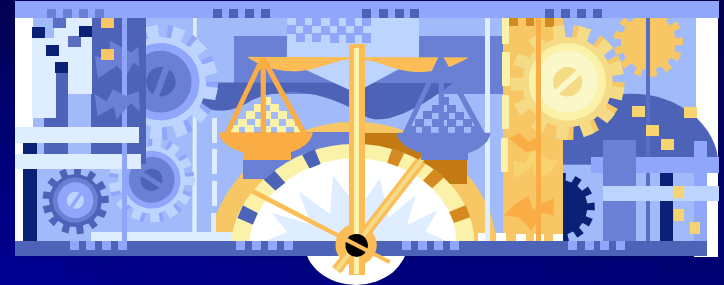
- [Dodd-Frank on Nonprofit Healthcare](#)
- [“IRS Audits Harvard, Other Universities in Probe of Exempt Purpose Rules”, BNA](#)
- [Housing for Museum Chiefs Attracts Notice](#)
- [Feds Investigate Overtime Pay in Health Care Industry](#)
- [IRS EO Update Features](#)
- [Online Guide for Executive Compensation for Charities in the Works](#)
- [University Presidents’ Housing Highlighted by New Form 990](#)
- [NJ Regulations Cap Executive Pay at Nonprofits](#)
- [More on IRS Interim Report on College and Universities](#)
- [IRS Remarks to Council on Foundations Provide Important Guidance to Private Foundations](#)
- [Pulling the Reins \(a Bit\) on Hefty Salaries for Cultural Executives \(The New York Times, April 26, 2010\)](#)

Why Do We Care?



- SHRM Future Insights: Corporate Social Responsibility and Sustainability
- IRS Survey of Colleges and Universities – 40 audited; Study of Nonprofit Hospitals starting 2006; IRS examined compliance by 2000 Nonprofits starting 2004
- June 2010 GuideStar Survey – 40% of nonprofits see further declines in contributions, while 63% see increased demand for services (Food and nutrition an exception)
- National Media: Modern Healthcare, Chronicle of Higher Ed, Chronicle of Philanthropy, THE OPTICS
- **Personal Liability** for Executives and Board Members

Executive Compensation, Governance, Comparability, Optics, Design



- Intermediate Sanctions
 - Excess benefit transactions
 - Rebuttable presumption of reasonableness
 - Reasonable compensation
- Public Availability of Form 990 and **NEW** Disclosures
- Elements of Compensation and Comparability Data – What's Needed? What's Excess?

IRS Intermediate Sanctions Personal Penalties

- Penalty (“Excise”) taxes on the “excess”
- *Personal* liability
- 25% tax on the *recipient*
 - 200% if not corrected by deadline
- 10% tax on the manager(s) who “knowingly” approved the transaction, up to \$20,000 aggregate



Intermediate Sanctions

- Why “Intermediate”?
 - Gives IRS a remedy between doing nothing and revoking Exempt status
- Rule: *Cannot provide “Excess Benefit” to “Disqualified Person”*
- HR and compensation professionals can assist the Board and senior management in complying

IRC Section 409A

- Rules on “Deferred” Compensation
 - If not in compliance, all amounts will be *currently* included in income
- Broad coverage
 - Nonqualified plans in general
 - Bonuses, severance
- Complex; always check compliance

Rebuttable Presumption of Reasonableness (Safe Harbor)

Payments are considered reasonable IF

1. Advance approval by an authorized, disinterested group of the organization.
2. Appropriate comparability data is used.
3. The decision is documented by the later of 60 days or before the next meeting of the group.



Note – new Form 990 asks if this process is used

Intermediate Sanctions

Special Rules for Smaller Organizations and Lower Paid Executives

- Organizations with less than \$1 million annual gross receipts may use compensation data from just three comparable organizations in the same or similar communities for similar services.
- Lower-paid executives are not “disqualified” if they receive economic benefits from the organization, directly or indirectly, of less than \$110,000. (Not available for CEO and other senior officials, or controlling parties.)

Total Compensation Means All Elements of Pay

- Base Salary
- Short-term Incentives
- Long-term Incentives
- Deferred Compensation/Capital Accumulation (457(b), 457(f), split dollar, trusts, Professional Roth)
- Perquisites (contract, severance, auto)
- Non-monetary

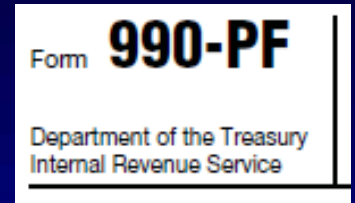


Deferred Compensation

Important, costly, complex, disadvantageous

- 457(b): \$16,500, non-qualified deferred, execs
- 457(f): No limit, substantial risk of forfeiture and 409A
- 457(e): Not a deferred plan, bona fide severance pay plan
- Life insurance options: Grandfathered/ new Split Dollar

How do nonprofit sectors differ?



- Prevalence of trustee/board compensation
- Form 990-PF for foundations, not technically covered by Intermediate Sanctions
- Size measurement: assets, revenue, giving
- Prevalence of housing in higher ed and faith-based
- Form of charitable contributions – service, education
- Prevalence of incentives

Comparability Data

What's Excess? \$1M?

Factors Affecting Base Salary and Total Comp

➔ Reasonableness factors from case law, IRS opinions and letters

➔ Organization size

Competitive market

➔ Geographic region

Performance

Scope of work

New! Dodd-Frank ratios



Helpful Tools for Compliance

- SalaryExpert's "Preliminary Tax-Exempt Executive Compensation Report", and notice that use of comparables alone is not protective
<http://www.salaryexpert.com/?FuseAction=PCSRports.Main&ItemID=20>
- GuideStar's "CEO Compensation Checkpoint"
- Tally Sheet
- Analysis of IRS Forms 990
- Analysis of Surveys
- Pay Compared to Policy
- Media Checklist

What's a Tally Sheet?

- A detailed list and values of all compensation provided by the organization and related organizations to disqualified executives
- Transparency and documentation
- Made available to key decision-makers
- Responds to historical cases where aspects of compensation were not fully disclosed to Trustees



What's on an IRS Form 990?

Policy Questions

- ✔ Used compensation committee?
- ✔ Used independent compensation consultant?
- ✔ Used Forms 990s of other organizations?
- ✔ Have written employment contract?
- ✔ Used compensation survey or study?
- ✔ Met safe harbor?

IRS Form 990 Focus on Governance**2009****Open to Public
Inspection**Department of the Treasury
Internal Revenue Service

Tax Yr-End	Name	Title	Hrs	Base Comp	Bonus & Inc Comp	Other Rptbl Comp	Def Comp	Non-taxable Benefits	Tot of Col (B)(i)-(D)	Comp. Reported in Prior Form 990 or Form 990-EZ	Tot Rev M	Tot Exp M
			50	\$572	\$90	\$40		\$10.9	\$715		\$176	\$179
			55	\$401	\$37	\$7	\$0	\$13.7	\$460	\$0	\$213	\$216
			50	\$324	\$50	\$22	\$96	\$11.7	\$505	\$0	\$145	\$149

Focus on Compensation Objectives

- Target Talent
- Attract, Retain, Reward
- Compensate Based on Business Needs and Strategic Objectives
- Assure Compliance and Good Governance



Arriving in NYC

- The hospital has net revenues of \$300M, an operating margin of - 3%, and all union contracts are under negotiation.
- The new CEO came from North Dakota to NYC, for a base salary of \$250,000 with an annual incentive, few perquisites and a promised retirement plan. He also has a 30% long-term incentive that will be determined each year and paid out three years later.
- The performance objectives have not been determined, but things seem to be changing at a fierce pace.
- Due to an error in timing the most recently filed Form 990 includes two incentive payments to the prior CEO for reported cash of \$700,000.
- The newly-established Compensation Committee wants HR to assure they are meeting regulatory requirements, and are within the safe harbor.

Arriving in NYC

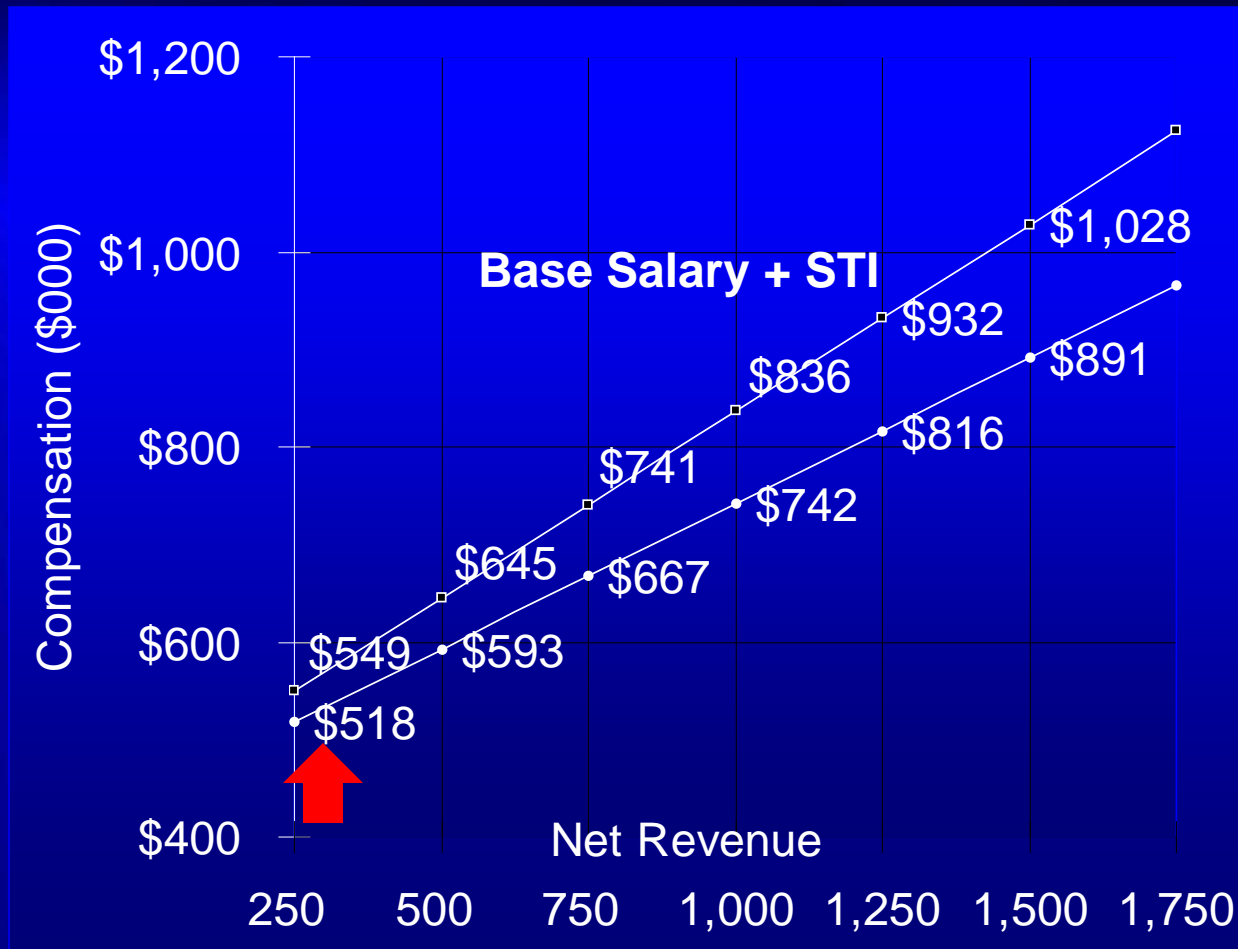
Base Salary Analysis

	Survey	Market Mean Base (1/1/10)	Market 75th Base	Current Client Base
Chief Executive Officer (CEO)				
19 hospitals	Survey 1	\$499,675	\$553,635	\$250,000
Regression \$200M op exp	Survey 2	\$454,780		\$250,000
A, B, C, D, E, F	Survey 3	\$469,291	\$502,257	\$250,000
17 hospitals	Survey 4	\$510,138	\$534,013	\$250,000
Operating Budget \$200M	Survey 5	\$405,227	\$482,270	\$250,000



Arriving in NYC

Regression Analysis of CEO Base Salary



Arriving in NYC

Responses to Case Study

- Salary differential North Dakota to NYC of 1.34%
- Market competitiveness and rebuttable presumption
- Timing and use of new hire provisions of Int Sanc?
- Discretionary incentives? Approach to performance objectives and structured incentives. 409A?
- Prepare Board Chair to speak to media about Form 990 in response to union and other inquiries, help Board and CEO address gaps



Arriving in NYC

Use of Salary Ranges

Range Minimum	Midpoint (Set at Market)	Range Maximum	Range Spread
\$357,143	\$500,000	\$642,857	80%

Wage and Salary Design: How does it differ from executive comp?

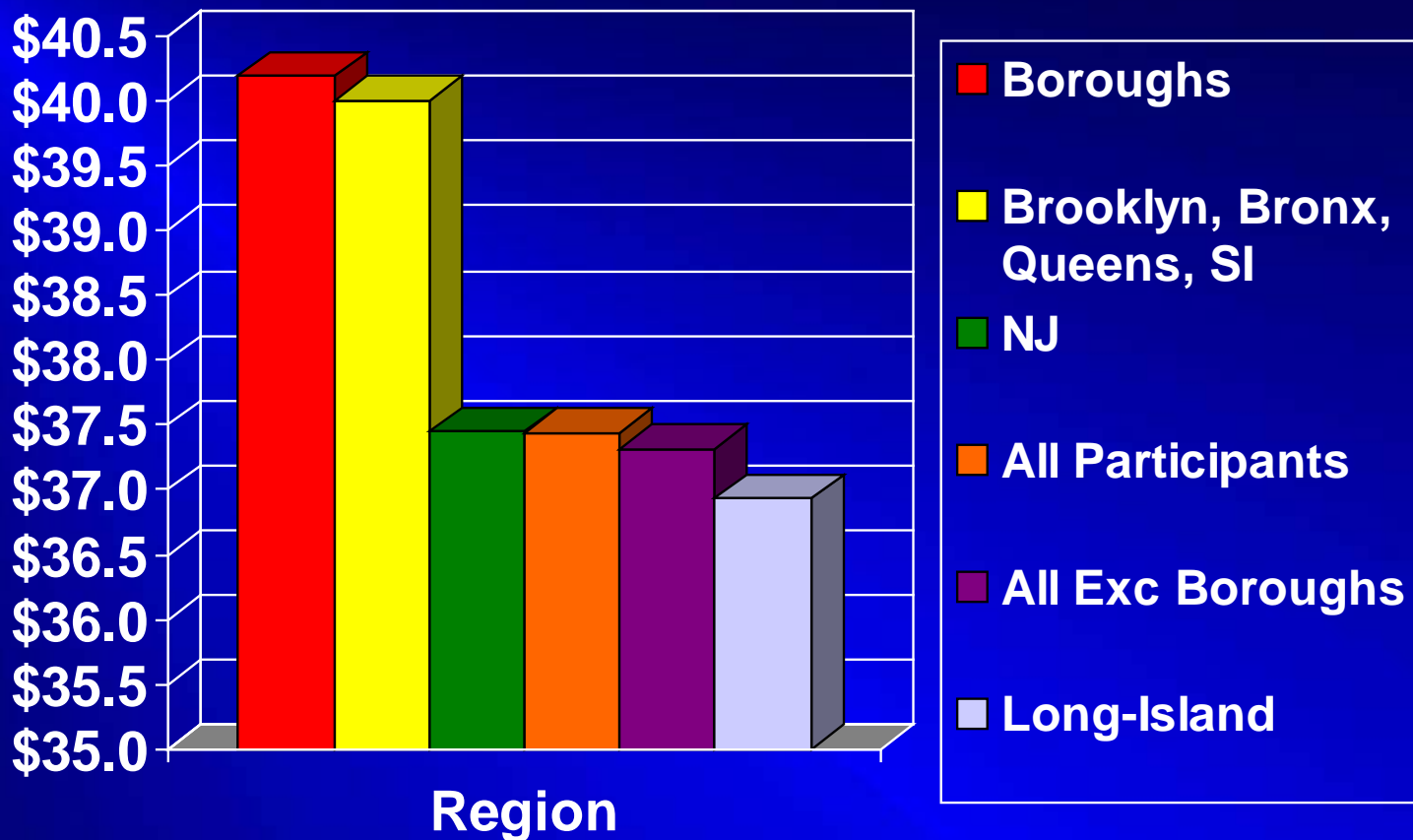
- ▶ Emphasis on Scope of Work – Dodd-Frank
- ▶ Widespread Recruitment, Turnover/Retention
- ▶ Competitors – Local
 - Structured (Ranges, Internal and External Equity)
 - Collectively Bargained
 - Employee Engagement
 - Performance, Years of Experience, Seniority
 - Work/Life (It's not just about the compensation)

Economic Trends

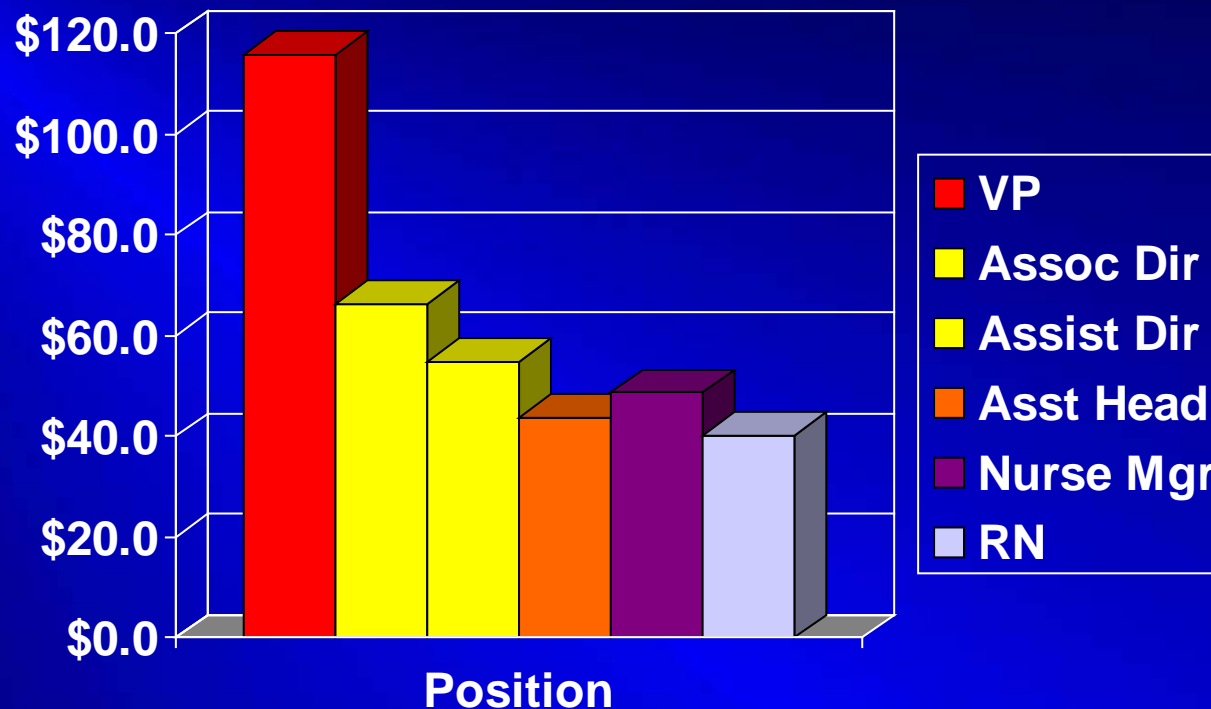
- Projected increases vary 2.2% -4.5% by level and industry
- Catch-up increases?
- WorldatWork Survey merit increases 2.2%, lower than planned 3.9%
- SHRM 2.2% salary increases
- Growth of green jobs
- SHRM Metro Economic Outlooks:
 - Boston – education and healthcare growing, pay holding



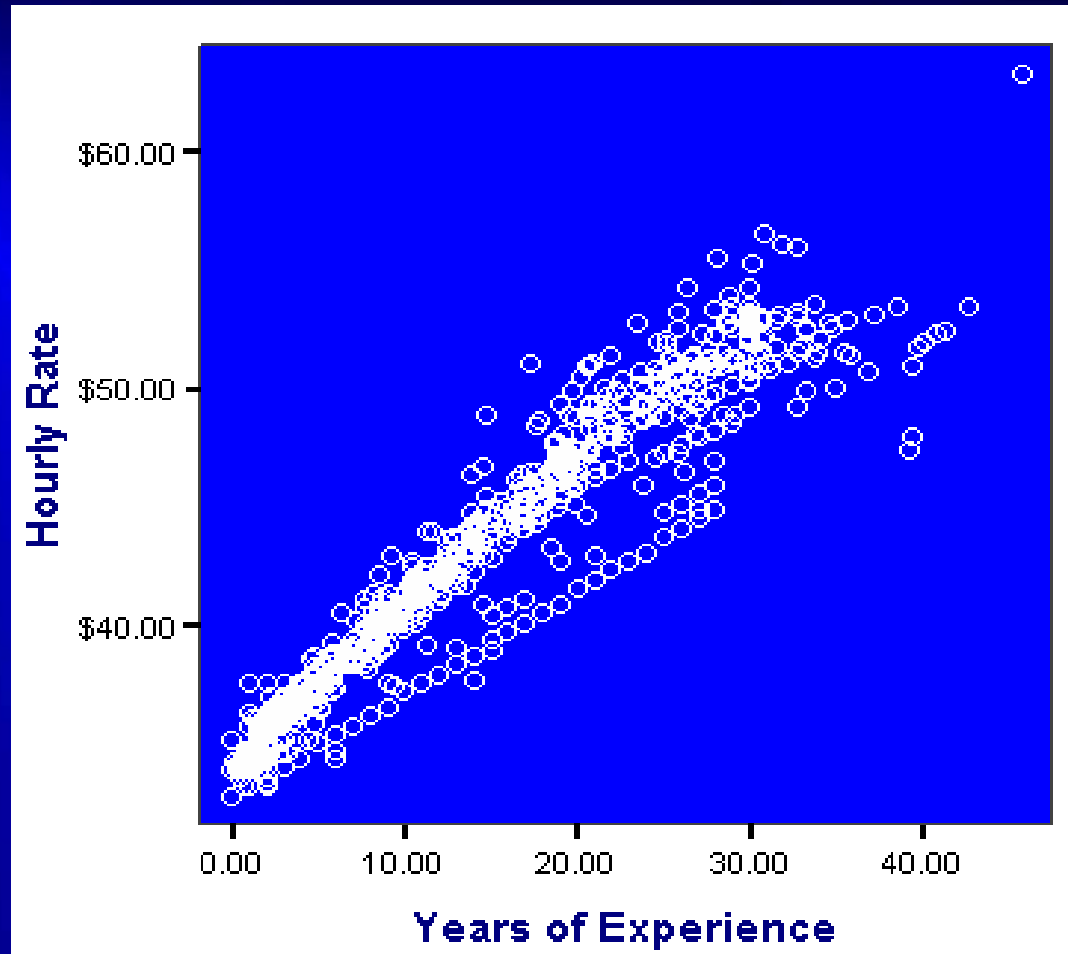
Geographic Comparison of Market Jobs - RN



Internal and External Equity Nursing, Boroughs, Median



RN Hourly Rates by Years of Experience (Example Only)



Incentive Design

- Engages employees!
- Links performance and pay
- Has meaningful, measureable, controllable performance targets
- Examines over- and under-achieving outcomes
- Is structured with targets and maximums - not discretionary
- Amounts calculated in line with market
- Plan documentation



What's right with the UltraSource Plan? (NPR's All Things Considered)

An example of a successful plan

- Employee engagement
- Communication
- Translation of operational objectives into actions
- Linking performance and pay

Resources

Lawrence Associates has developed online resources to assure that nonprofits have the most current information on important compensation topics.

These resources can be accessed directly from our [Website](http://www.lawrenceassociates.com) at www.lawrenceassociates.com

- ✓ [Video and slides of Lawrence Associates' webinars on executive compensation](#)
- ✓ Our continually updated [Blog](#) about executive compensation topics.
- ✓ Our executive compensation [NewsFeed](#) selecting articles directly from the news about executive compensation across industries and regions.
- ✓ Our [Resources/News](#) page that includes articles, IRS pronouncements and regulatory activity and resource information.
- ✓ Look for us on [LinkedIn](#), and follow us on Twitter @lawrence_comp

Lawrence Associates

Compensation Consultants

Comprehensive compensation consulting solutions for trustees and directors, executives and managers of nonprofit organizations, spanning the continuum of healthcare, foundations, colleges and universities and other nonprofit sectors.

- Executive Compensation – competitive analysis; compensation strategy; incentive plan design; capital accumulation; perquisites; benefits, trustee education and response to media and public disclosure.
- IRS Intermediate Sanctions and Reasonable Compensation Review – analysis and certification under the IRS safe harbor rules.
- Wage and Salary Program Design and Incentive/Bonus Pay – variable pay/incentives, wage and salary program design; performance evaluation and other reward programs.
- Custom Competitive Analysis & Surveys – competitive analysis, custom-designed competitive market surveys and analyses of all sizes.

Lawrence Associates

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Wrap-up

- We are happy to answer submitted questions for the final minutes of this presentation.
- Join Wednesday Webinars for upcoming topics:
 - 9/1 1pm Time and Stress Management Techniques
 - 9/8 1pm Managing Expectations and Volunteers: A Win-Win
- This presentation will be available for download from www.lawrenceassociates.com