

Private Foundation Executive Compensation



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9th Annual Private Foundations Executive Symposium

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Overview

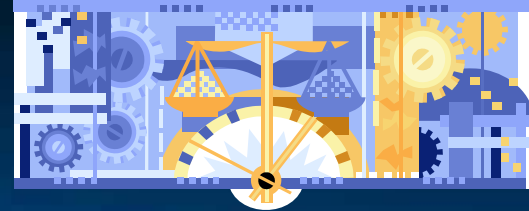
- **Good governance matters**
- **Accountability and good governance basics**
- **Helpful tools for determining executive compensation**
- **Impact of organization structure and market data on executive compensation**
- **Responding to the media**

Good Governance Matters

- Private foundations not required to comply with IRS Intermediate Sanctions, but it's considered a Best Practice
- Private foundations must adhere to self-dealing regulations which are considered harder to comply with
- Compensation typically based on asset size, level and complexity of grant-making, academic degrees and certifications
- File public Form 990-PF
- High expectation of integrity by grantees and public
- May lack “disinterested” board
- Foundation watchdogs, media profile, and examples of foundation missteps



Accountability and Good Governance



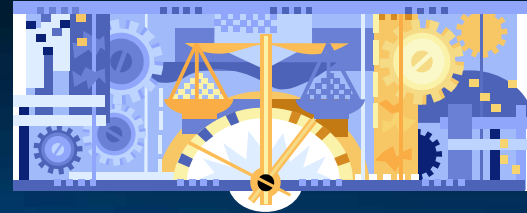
■ Inurement

- A private foundation must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization. (IRS)

■ Self-dealing

- Section 4941 of the Internal Revenue Code imposes an excise tax on certain transactions ([acts of self-dealing](#)) between a private foundation and disqualified persons.
- See Council on Foundations “Self-dealing” Q&A http://www.cof.org/topic/self-dealing?tid_1=All&member_only_flag_value=All&page=1
- See IRS on the Life Cycle of a Private Foundation <http://www.irs.gov/Charities-&-Non-Profits/Private-Foundations/Life-Cycle-of-a-Private-Foundation>

Accountability and Good Governance



■ Intermediate Sanctions

- Doesn't cover private foundations, but a good model
- Excess benefit transactions to Disqualified Persons
- Rebuttable presumption of reasonableness (safe harbor)
- Reasonable compensation

■ Public IRS Form 990-PF and **Revised (2008)** 990

■ Other tax related - 409A, 457

IRS Intermediate Sanctions

- Why “Intermediate”? Gives IRS a remedy between doing nothing and revoking Exempt status
- Rule: Cannot provide “Excess Benefit” to “Disqualified Person”
- Safe Harbor
 - For a thorough discussion of Intermediate Sanctions, including its history, interaction with inurement and comparison to private foundation requirements see Rody, 476 T.M., Intermediate Sanctions.
 - The Council on Foundations strongly recommends that when reviewing and approving executive compensation, all foundations—private and public—adopt and follow the three-step procedure set forth in the regulations that implement the intermediate sanctions rules for public charities. See “Hiring a New CEO Resource Guide”, and “Determining Reasonable Compensation for Foundation Directors and Trustees”, Council on Foundations.

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 –Form 990 asks if this process is used

Reasonable Compensation

- Scope of responsibilities and position description
- Background and experience/qualifications
- Knowledge of the business, special or unique abilities
- Size of the organization – assets, revenues
- Organization and individual performance
- Time devoted, historical compensation or under-compensation
- Economic conditions, business cycle and related factors
- Organization structure and internal equity
- Character and amount of responsibility/Multi-functional roles
- Mix and size of compensation elements – cash, non-cash
- Compensation in relation to production/output/gain (i.e. compensation expense versus assets and grants)
- Comparability of pay for selected competitive marketplace
- Arms length negotiations, offers

See Moran, 390-5th T.M. *Reasonable Compensation*. *Reasonable Compensation*, Tax Management Portfolios, Bureau of National Affairs, Inc.

Helpful Tools for Determining Executive Compensation

- Tally Sheet Disclosure of All Compensation
- Analysis of IRS Forms 990-PF
- Analysis of Surveys – Council on Foundations, Exponent Philanthropy
- Written Pay Policy and Pay Compared to Policy
- Documentation of Job Responsibilities, Hours Worked, Level of Activity and Output, Best Practices compliance
- Media Checklist

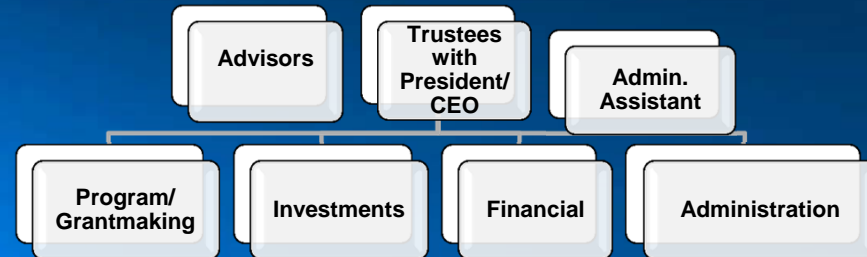
What's a Tally Sheet?

- A detailed list with 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



Organization Design

- Overview of Functional Responsibilities
 - Fiduciary/Trustee
 - Program
 - Investments
 - Financial
 - Administrative
- Distribution of Responsibilities
- Compensation for Responsibilities
- Fiduciary Parameters



Sample Analysis of Market Salary for Top Position using IRS Forms 990-PF

	Asset Size in Millions	Comp.	Contributions to employee benefit plans & deferred comp	Expense account, other allowances	Total Comp.
Count	18	18	18	18	18
75 Percentile	\$178	\$321,181	\$48,570	\$0	\$345,903
Average	\$163	\$275,257	\$31,321	\$343	\$306,922
Median	\$160	\$275,688	\$18,032	\$0	\$293,181
25th Percentile	\$147	\$188,065	\$6,404	\$0	\$196,987

- Other sources of data include published surveys from Exponent Philanthropy (formerly Association of Small Foundations), Council on Foundations or online like salary.com, payscale

Responding to the Media



- Establish compliant policies and procedures
- Develop, review and update “Media Talking Points.”
- Prepare spokesperson (not CEO) – background on Form 990 –PF, year-to-year changes, pay philosophy, scope of information to provide
- Understand nature of inquiry
- Refer further questions to supportive third parties
- Address internal audience issues – notify those on Form 990-PF of public disclosure



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Feel free to contact us with questions

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