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TO PROFIT OR NOT-TO-PROFIT: AN EXAMINATION OF EXECUTIVE COMPENSATION IN NOT-FOR-PROFIT ORGANIZATIONS CONTRACTING WITH NEW YORK CITY

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TO PROFIT OR NOT-TO-PROFIT: AN EXAMINATION OF EXECUTIVE COMPENSATION IN NOT-FOR-PROFIT ORGANIZATIONS CONTRACTING WITH NEW YORK CITY*

A Staff Report to Hon. Thomas V. Ognibene

The Council of the City of New York

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Executive Summary

Overview

Over the last several decades the number of not-for-profit (“NFP”) organizations has grown substantially both in New York City and throughout the nation. With the rise in the number of NFPs has come a dramatic increase in the importance and impact these organizations have on our lives. Responding to continuing pressure to downsize, all levels of government have increasingly relied on contracts with NFP organizations to deliver many of the services that they once provided directly to their residents.

The organizations included in this report are reflective of some of the diverse functions performed by NFPs. They include nursing homes, child care centers, community service organizations and a provider of legal services. The increased reliance on non- or quasi-governmental entities to provide many essential services, particularly in the health and social service fields, presents government with important challenges. One of these is to ensure public accountability regarding the expenditure of public funds by NFP organizations providing public services. Toward this end, government must satisfy the public that the amount such organizations spend on operating costs, such as leases, purchase of supplies and equipment, and executive compensation, is adequately disclosed.

In light of the substantial increase in the number and value of the NFP contracts entered into by City agencies, Thomas V. Ognibene, Minority Leader of the New York City Council, requested that the Council's Office of Oversight and Investigation ("O&I") examine the compensation being paid to the executive directors of NFPs doing business with New York City. In addition, Council Member Ognibene asked O&I to review the public accessibility of financial records kept by NFPs. The study that followed had two goals:

First, Council staff sought to contrast the compensation being paid to the executive directors of NFPs that have large contracts with the City to provide social services with several commonly accepted measures used to determine "reasonableness." To accomplish this, Council staff reviewed 56 annual financial returns representing approximately half of the NFPs that held contracts worth \$2 million or more with four City agencies in Fiscal Year ("FY") 1994. The four City agencies were the Department for the Aging ("DFTA"), the Department of Mental Health, Mental Retardation and Alcoholism Services ("DMH"), the Department of Social Services ("DSS"), and the Human Resources Administration ("HRA"). The compensation paid to executive directors of these NFPs, as listed on the annual financial returns, were contrasted with generally accepted criteria used to determine whether or not compensation is excessive.

Second, Council staff examined the potential accessibility of annual returns kept by NFPs and required to be available to the public under Federal law. Staff telephoned all of the NFPs included in the survey to determine whether this information would be available to members of the public from the NFPs.

Summary of Findings

O&I's detailed examination of Federal and State annual financial returns of 56 NFPs contracting with the City in FY 1994 revealed the following:

Compensation Comparisons to Other Not-for-Profits¹

- NFPs with less than \$5 million in functional expenses paid their executive directors a median of \$70,422 — 51% more than the national median of \$46,535 for NFPs of similar size.

1. See discussion *infra* Part IV.A. The compensation comparisons are arranged by the size of the NFP (functional expenses).

- NFPs with more than \$25 million in functional expenses paid their executive directors a median of \$161,141 — 22% more than the national median of \$132,392 for NFPs of similar size.
- NFPs with functional expenses between \$5 million and \$10 million paid their executive directors a median of \$82,390 — 3% more than the national median of \$80,000 for NFPs of similar size. NFPs with functional expenses between \$10 million and \$25 million paid their executive directors a median of \$103,035 — 1% less than the national median of \$103,842 for NFPs of similar size.

Compensation Comparisons to the Public Sector²

- Over 29% of all NFPs paid their executive directors more than the typical City Commissioner, who earned \$110,000 in FY 1994.
- Sixteen percent (16%) of all NFPs paid their executive directors more than the Mayor, who earned \$130,000 in FY 1994.
- Sixty-three percent (63%) of executive directors at NFPs with functional expenses of more than \$25 million were paid more than New York City's Mayor in FY 1994.

Compensation Comparisons within the Survey Sample³

- Compensation for executive directors at NFPs with functional expenses of less than \$5 million ranged from a low of \$28,284 to a high of \$169,395, a difference of \$141,111 (499%).
- Compensation for executive directors at NFPs with functional expenses between \$5 million and \$10 million ranged from a low of \$43,770 to a high of \$103,115, a difference of \$59,345 (136%).
- Compensation for executive directors at NFPs with functional expenses between \$10 million and \$25 million ranged from a low of \$70,321 to a high of \$166,930, a difference of \$96,609 (137%).
- Compensation for executive directors at NFPs with functional expenses of more than \$25 million ranged from a low of \$79,750 to a high of \$245,802, a difference of \$166,052 (208%).

Access to the Annual Returns of Not-for-Profits⁴

- Ninety-two percent (34) of the 37 NFPs which completed the telephone access survey told callers that it was *not* possible to

2. See discussion *infra* Part IV.B.

3. See discussion *infra* Part IV.C.

4. See discussion *infra* Part V.

write to and visit the NFP to obtain access to the organization's annual return.

- Eight percent (3) of the 37 NFPs which completed the telephone access survey told callers that it *was* possible to write to and visit the NFP to obtain access to the organization's annual return.
- Detailed profiles on each of the 56 not-for-profit organizations included in the Council's survey can be found in Appendix A of the originally published version of this report, on file with O&I. In addition to containing information on the amount and type of contract the organization held with the City, each profile compares the NFP's executive director's compensation against several benchmarks.

I. Introduction

A. Government and the Not-for-Profit Sector: A Changing Landscape

The last twenty years have been a period of dramatic growth for the nation's not-for-profit organizations (NFPs). During this period, the not-for-profit sector has grown both in number and overall economic clout. The total number of the nation's NFPs increased by 27% from 1978 to 1990. In 1990, there were more than one million NFPs in the US.⁵ Concurrently, the assets of NFPs increased in real terms by more than 150% to well more than \$1 trillion, and their revenues jumped by 225% to approximately \$560 billion per year.⁶ By 1994, NFPs employed more than nine million people whose combined earnings exceeded \$160 billion — accounting for nearly 20% of the total income of the entire US service economy.⁷

The number of NFPs in New York City has dramatically increased as well. Growth in the NFP sector has surpassed most other sectors in the City. In contrast to the 10% drop in the New York's overall job base from 1984 to 1994, employment by social

5. See U.S. GENERAL ACCOUNTING OFFICE, TAX EXEMPT ORGANIZATIONS: INFORMATION ON SELECTED TYPES OF ORGANIZATIONS 19 (February 28, 1995), *available in* <<http://www.gao.gov>> [hereinafter TAX EXEMPT ORGANIZATIONS]. Within this overall group, those not-for-profits organized for solely charitable purposes experienced even greater increases, jumping nearly 67%, from 293,947 in 1978 to 489,891 in 1990. See *id.* at 19.

6. See TAX EXEMPT ORGANIZATIONS, *supra* note 5, at 9.

7. See Steven Werner & Gretchen Gemeinhardt, *Nonprofit Organizations: What Factors Determine Pay Levels?*, COMPENSATION AND BENEFITS REVIEW, Sept. 1995, at 53.

service NFPs jumped by 60%, from approximately 55,000 to more than 150,000 — surpassing the number of persons employed on Wall Street in 1994.⁸

Much of the expansion in the not-for-profit sector can be traced to the increasingly common trend of government entities at all levels to contract with NFPs to deliver many of the services that they once provided directly. In New York City, contracts with NFP providers have grown substantially in recent years. The total number of contracts awarded to NFPs by all City agencies in FY 1994 was 2,646. A majority of these contracts (1,573) were awarded by four agencies — the Department for the Aging (“DFTA”), the Department of Mental Health, Mental Retardation and Alcoholism Services (“DMH”), the Department of Social Services (“DSS”), and the Human Resources Administration (“HRA”).⁹

B. Government Oversight of Not-for-Profit Organizations

For government, the contracting out of taxpayer-funded services can have a number of potential attractions. These include the ability to reduce the size of government bureaucracies, and the perception that such outsourcing can be less expensive than the direct provision of services.

Unfortunately, with the expansion of the not-for-profit sector there has also been an increase in reports of financial mismanagement and abuse. In 1992, the United Way of America appeared in newspaper headlines across the country as news of financial improprieties was revealed.¹⁰ Subsequently, the media reported incidents of suspected abuse involving questionable expenditures, excessive compensation, and failure to comply with Federal filing requirements at other not-for-profits. In New York City, additional examples of extremely generous compensation for some ex-

8. See Robin Kamen & Steve Malanga, *Nonprofits: NY's New Tammany Hall*, CRAIN'S NEW YORK BUSINESS, Oct. 31, 1994, at 18.

9. Council staff obtained information on number of NFP contracts from the New York City Financial Information Services Agency (“FISA”) which is responsible for centrally compiling and reporting financial data pertaining to the operation of New York City government.

10. See Felicity Barringer, *United Way Head is Forced Out In a Furor Over His Lavish Style*, N.Y. TIMES, Feb. 28, 1992, at A1; Kathleen Teltsch, *United Way Awaits Inquiry on Its President's Practices*, N.Y. TIMES, Feb. 24, 1992, at A12.

ecutive directors were brought to light in the City Council's 1995 study of not-for-profit Business Improvement Districts ("BIDs").¹¹

As City agencies contract with not-for-profit organizations to provide an increasingly larger portion of their mandated services, they lose many of the control mechanisms that government traditionally employs to prevent abuses and ensure public accountability.¹² In the absence of direct administrative control of NFPs, government oversight is often performed through enforcing Federal and State laws, regulations, and contractual provisions.

Charitable and social service organizations in New York State enjoy tax-exempt status because of Federal and State law. Under section 501 (c) (3) of the Federal Tax Code, organizations that are operated exclusively for charitable, testing, educational or recreational purposes are exempted from Federal taxation. These organizations also enjoy tax-free status under section 172 (9) of New York State's Not-for-Profit Corporation Law. In return for their tax exempt status, Federal law prohibits NFPs from using net earnings to augment the personal gain or profit of any shareholder or individual; only "reasonable compensation" is permissible. In addition, not-for-profit organizations must also file annual returns with the government as well as make this information available to the public.¹³

In light of the number and value of the NFP contracts entered into by City agencies, Thomas V. Ognibene, Minority Leader of the New York City Council, requested that the Council's Office of Oversight and Investigation ("O&I"):

- Examine the executive compensation and benefits being paid to the executive directors of NFPs doing business with New York City;
- Contrast such executive compensation with severally generally accepted measures used to determine "reasonableness;" and

11. See STAFF REPORT TO THE NEW YORK CITY COUNCIL FINANCE COMMITTEE, CITIES WITHIN CITIES: BUSINESS IMPROVEMENT DISTRICTS AND THE EMERGENCE OF THE MICROPOLIS (Nov. 8, 1995).

12. The phenomenon of government's increasing reliance on not-for-profit and other non-governmental organizations has been the focus of a growing body of scholarly literature. For one overview, see *Symposium on the Hollow State: Capacity, Control and Performance in Interorganizational Settings*, 6 JOURNAL OF PUBLIC ADMINISTRATION RESEARCH & THEORY (April 1996).

13. See 26 U.S.C.A. § 6104 (d),(e) (West Supp. 1998); Taxpayer Bill of Rights, Pub. L. No. 104-168, 110 Stat. 1452 (1996). For a discussion of Federal and State reporting requirements, see *infra* note 16.

- Determine the extent to which annual financial returns filed by NFPs required to be available to the public by State and Federal Law, were accessible.

II. Methodology

A. Survey Sample Selection

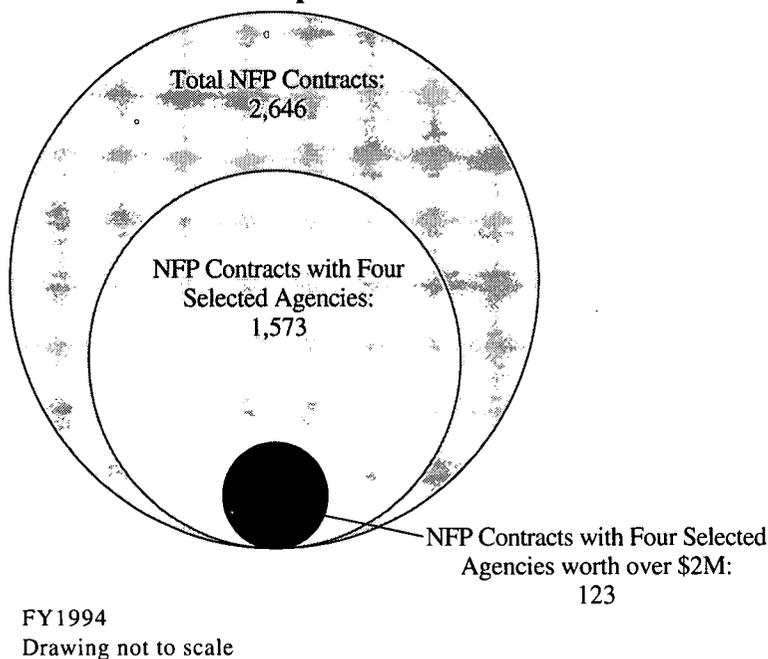
In order to draw a sample for review in this study, O&I staff obtained a list of the total number of contracts let by the City with NFP organizations in FY 1994 from the City's Financial Information Services Agency ("FISA").¹⁴ The resulting universe of 2,646 contracts was then reduced by applying two criteria: the City agency which let the contract and the contract's total dollar amount. Regarding the first criteria, since recent press reports concerned NFPs providing social, mental health and aging-related services, the Council included in its sample any NFPs that held contracts with the following agencies in FY 1994: the Department for the Aging ("DFTA"), the Department of Mental Health, Mental Retardation, and Alcoholism Services ("DMH"), the Department of Social Services ("DSS"), and the Human Resources Administration ("HRA").

These four agencies let the most contracts with not-for-profits, totaling 1,573 contracts in FY 1994 — 59% of all contracts let that year. With respect to the second criteria, the total dollar amount, the Council's review only included contracts with these four agencies of \$2 million dollars or more.¹⁵ Application of this criteria reduced the number of organizations examined to 123. This selection process is illustrated in Figure 1.

14. At the time Council staff obtained the FISA information, FY 1994 was the most recent year for which such information was available. All information on NFPs in this report represents FY 1994 data unless noted.

15. Contracts were included in the Council's sample based on the *Revised Max Amount* as reported by FISA. Since some of the contacts span several years, the actual amount of funding received by a NFP in a particular year may be less than the total contract amount.

Figure 1
Selection of Sample from Total NFP Contracts



Detailed annual returns for each of these 123 organizations were requested from the New York State Attorney General's Office of Charities. Under Federal law, not-for-profits required to file an annual return must report the compensation of its five highest paid employees on the Internal Revenue Service ("IRS") Form 990 Schedule A. This information, along with the IRS Form 990 which provides basic financial information including the organization's revenue, expenses, and compensation of officers, directors and trustees, is required by State law to be available for public inspection at the offices of the Attorney General.¹⁶ Form 990 and Form 990 Schedule A are collectively referred to in this report as the

16. According to 26 U.S.C. §§ 6033(b) and 501(c)(3), organizations required to file an annual return must furnish these key items: gross income; expenses attributable to such income; disbursements; a balance sheet; and the compensation and other payments made during the year to highly compensated employees.

Article 7-A, section 172-b(1) of the New York State Executive Law requires that NFPs ". . . file an annual written report with the secretary upon forms prescribed by the secretary." Section 172-b(7) further states that "the secretary [of state] may accept a copy of a current annual report previously filed by a charitable organization with any other governmental agency [to comply] with the provision of this article. . ." Instructions provided by the Attorney General's Office regarding compliance with these provisions of article 7-A indicate that these reporting requirements are fulfilled by the submission of the organization's IRS 990 annual return. In addition, section 8-

“annual return.” The Attorney General’s Office supplied Form 990 and Schedule A documentation on 67 (54%) of the 123 organizations for which Council staff requested information.

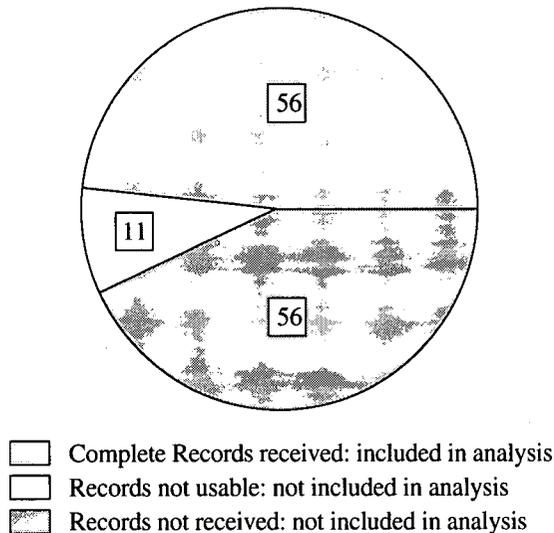
According to the Attorney General’s Office, records were not available for the other 56 entities because these organizations had not submitted their annual returns, had filed a request for an extension, the entity was not required to file because it was in a category exempted by law (such as a hospital or an organization affiliated with a religious organization), or the annual return was unavailable for other reasons. Of the 67 annual returns received by the Council, 11 were dropped from further consideration because (i) data was missing (four cases), (ii) the data was illegible (one case), (iii) it was reported that the executive director¹⁷ received no financial compensation (five cases), or (iv) the NFP was not required to file (one case).¹⁸ The remaining 56 NFPs represent 46% of all organizations which held a contract of more than \$2 million with DFTA, DMH, DSS, and HRA in FY 1994, and have contracts worth a combined total of \$574,394,183.

1.4(l) of the New York State Estates, Powers and Trusts Law requires that “. . .reports filed with the Attorney General shall be open to public inspection. . . .”

17. Throughout this report, the term “executive director” is used to signify a NFP’s principal executive. Sometimes NFPs included in the Council survey use other terms such as “president” or “chief operating officer” to describe this individual. The uniform term “executive director” was chosen to reduce confusion and improve the clarity of the narrative.

18. The 11 organizations dropped from further consideration included the following NFPs: *missing data* — 163rd Street Improvement Council, Hartley House, La Peninsula Community Organization, St. Dominic’s Home; *illegible* — National Association of Family Development Centers; executive director receives no compensation — Head Start Sponsoring Board, Jewish Association for Services for the Aged, Narragansett Housing Development Fund Corp, Ryer Avenue Housing Development Fund, St. Mary’s Children and Families Foundation; *not required to file according to the Attorney general’s office* — Bronx Lebanon Hospital Ladies Auxiliary.

Figure 2
Breakdown of FY 1994 Contracts Meeting Survey Criteria



B. IRS Definition of Compensation

According to the instructions issued by the IRS for Form 990, the term “compensation” *includes* “salary, fees, bonuses, and severance payments paid.”¹⁹ Also included are “current-year payments of amounts reported or reportable as deferred compensation in any prior year.”²⁰ *Not included* in this amount are all forms of deferred compensation payments, future severance payments, contributions to Contributions to Employee Benefit Plans (“CEBP”) and welfare benefit plans such as medical, dental, and life insurance, and fringe benefits or expense accounts.²¹

Because this study is based on official IRS Form 990 filings, it is not possible to isolate an executive director’s base salary from any fees, bonuses or severance payments that a NFP might have paid in a reporting year. However, several sources suggest that, in most cases, the vast majority of what is reported in the Form 990 as “compensation” does consist of the executive director’s base salary. Both a national survey conducted by the consulting firm of Abbott, Langer and Associates (“ALA”) and anecdotal informa-

19. Internal Revenue Service, Instructions for Form 990: Return of Organization Exempt from Income Tax 1994-375-175, at 18.

20. *Id.*

21. *See id.*

tion provided by the IRS support this view.²² However, since exceptions to this can and do occur, the Council study will present its findings in terms of "compensation" as defined by the IRS.²³

Data on the compensation paid to the executive director of a not-for-profit organization is generally found in two places in an NFP's annual filing. The amount either appears under the heading "compensation" in part V, column C of Form 990 which requires information to be provided for "officers, directors, trustees, and key employees." or part I, column C of Form 990, Schedule A which requires a listing of the five highest paid employees.²⁴

C. Selecting Comparison Criteria

Federal law permits a deduction for "reasonable" compensation of executives of not-for-profit organizations.²⁵ However, the statute does not define what is meant by the term "reasonable." In determining whether a particular compensation level is reasonable, the courts have considered a variety of factors including the extent and scope of the employee's work; the size and complexity of the business; and the prevailing rates of compensation for comparable positions in comparable concerns.²⁶ The IRS has established a generic definition of the term "reasonable compensation" as "the amount that would ordinarily be paid by like organizations for like services."²⁷ The IRS adopts a case-by-case approach to determine whether an organization meets the reasonable compensation standard. In light of the absence of a clear single standard by which to evaluate whether the compensation earned by NFP executive di-

22. A survey conducted by Abbott, Langer and Associates (ALA) in 1994 asked 1,832 NFP organizations nation-wide for information on both annualized base salaries and "total annual compensation" which ALA defined as base salary plus bonuses and or profit sharing received over the last fiscal year. A comparison of these categories revealed that the median for "total annual compensation" was only minimally higher (between 0-3%) than the median annualized base salary alone. See ABBOTT, LANGER & ASSOCIATES, COMPENSATION IN NONPROFIT ORGANIZATIONS (1994). The notion that, *in most cases*, the compensation paid to NFP executive directors is closely related to base salary was also confirmed in a telephone interview with the IRS staff.

23. For a discussion of one such exception, see *infra* note 54.

24. See Appendix B attached to the originally published version of this report, on file with O&I, for examples of each of these forms.

25. 26 U.S.C. § 162 (a) (1) (1994).

26. See *Mayson Mfg. Co. v. Commissioner of Internal Revenue*, 178 F.2d 115, 119 (6th Cir. 1949); see also, *B.B. Rider Corp. v. Commissioner of Internal Revenue*, 725 F.2d 945, 952 (3d Cir. 1984).

27. See H. CARL MCCALL, STUDY OF EXECUTIVE COMPENSATION IN NOT-FOR-PROFIT CORPORATIONS, REPORT 93-D-29 6 (Feb. 7 1994) [hereinafter STUDY OF EXECUTIVE COMPENSATION IN NFP CORPORATIONS].

rectors was reasonable, the Council employed a combination of several standards with which to examine executive compensation.

In this report, comparisons are often described in terms of a median value. The median provides information on the middle value (a value with an equal number of observations above and below). The median is often used in studies where the total number of items being examined is relatively small and where a few extreme values (outliers) might unduly influence a simple arithmetic average.²⁸

1. *Comparison to Other Not-for-Profits*

One method of determining whether compensation is reasonable is to compare compensation paid by other not-for-profits of similar size. Several surveys of executive compensation at not-for-profits at the state and national level have been conducted. A survey conducted by Abbott, Langer and Associates ("ALA"), an independent management consulting firm known for its surveys of NFPs across the country, was chosen. The ALA survey, selected because of its widespread use by compensation specialists and its comprehensive sample size, utilized data obtained from questionnaires provided by 1,832 NFP organizations nation-wide in the Spring of 1994.²⁹

The ALA survey provides a considerable level of disaggregated information including analyses of average compensation by organizational size. This made comparisons between the NYC sample and the ALA findings possible.

2. *Comparison to the Public Sector*

To place executive compensation at the NFPs included in the Council survey in context, the compensation paid to the executive directors of these NFPs were also compared to the FY 1994 salaries³⁰ received by the Mayor of New York City and the commis-

28. For a more complete discussion on the use of these and other measures of central tendency, see EDWIN MANSFIELD, *BASIC STATISTICS* 46 (1986). For more on the use of medians in the specific context of evaluating not-for-profit compensation see, NON-PROFIT COORDINATING COMMITTEE OF NEW YORK, *THE NON-PROFIT SECTOR IN NEW YORK* (May 1992).

29. See ABBOTT, LANGER & ASSOCIATES, *supra* note 23.

30. Since the Mayor and City Commissioners do not receive fees, bonuses and severance payments, their base salaries are used when comparing the amount received by these public officials to the compensation received by the NFP executive directors included in the study. See *supra* Part II.B., for further discussion of what is meant by the IRS definition of "compensation."

sioners of several City agencies.³¹ Comparison of not-for-profit compensation with the compensation paid by the public and private sector is an accepted practice as long as the function performed is roughly comparable.³² The Council viewed this comparison as appropriate since executive directors of NFPs reviewed in this survey and government officials such as the Mayor and agency commissioners are all responsible for delivering public services.

3. *Comparison to the Council Sample*

A third method of comparison employed contrasts the compensation paid to executive directors by individual NFPs in the Council sample to the median compensation paid to executive directors of organizations of similar size. Additionally, a calculation of compensation as a percentage of the organization's total functional expenses was computed for each NFP included in the Council's survey.

III. Survey Sample Profile

The 56 organizations included in the Council review represent a wide range of not-for-profits. In addition to covering the distinct fields of aging, mental health, and social services, the organizations had annual functional expenses which ranged in size from \$1.6 to \$165 million.³³ This section presents descriptive profiles of the NFPs included in the Council survey detailing the total size of the organization's functional expenses and the amount of support received from government sources. The survey sample was disaggregated by the size of the organization's functional expenses in order to permit an analysis of "similarly situated organizations." Information on the percentage of support NFPs received from government sources is also provided to illustrate the considerable investment of public monies and the corresponding interest gov-

31. According to THE 1993-94 GREEN BOOK: THE OFFICIAL DIRECTORY OF THE CITY OF NEW YORK, the majority of City Commissioners received \$110,000 *per annum*. Thus, for the purposes of this report \$110,000 is considered the "typical" salary of a City Commissioner in FY 1994.

32. See *Mayson Mfg. Co.*, 178 F.2d at 119.

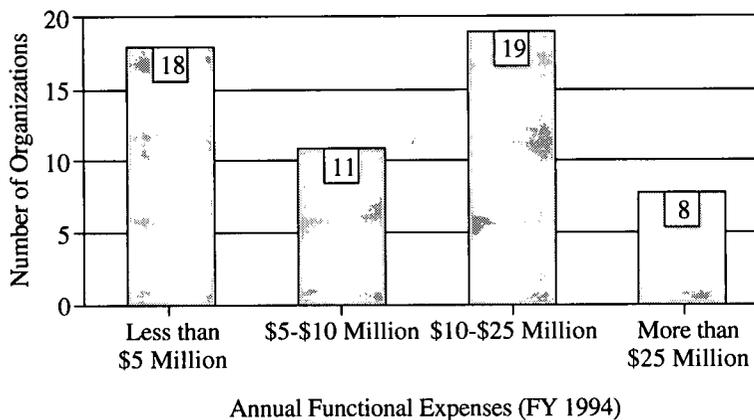
33. The figures cited are approximate, and reflect line 44 of the organization's functional expenses as reported on Form 990 for fiscal year 1994. See Appendix B attached to the originally published version of this report, on file with the New York City Council, Office of Oversight and Investigation, for a sample Form 990. The time period covered by fiscal year 1994 as reported by the 56 NFPs included in the survey varied. The 1994 fiscal year for the government of New York City ran from July 1, 1993 to June 30, 1994.

ernment has in ensuring compliance with Federal and State laws concerning public disclosure of annual returns.

A. Organizational Size by Functional Expenses

All NFPs included in the study were assigned to one of four financial categories: less than \$5 million; \$5 to \$10 million; \$10 to \$25 million; and more than \$25 million.³⁴ The NFPs were placed into a particular category based upon their total “functional expenses” as reported in the NFP’s Form 990 filed for 1994. Functional expenses represent the *actual amount* spent by an organization during a fiscal year. Of the 56 organizations examined, 18 (32%) reported functional expenses of less than \$5 million; 11 (20%) fell in the \$5 million to \$10 million category; 19 (34%) were included in the \$10 million to \$25 million group; and eight organizations (14%) reported expenses of more than \$25 million.³⁵ This distribution is reflected in Figure 3.

Figure 3
NFPs Included in Sample
By Size of Functional Expenses



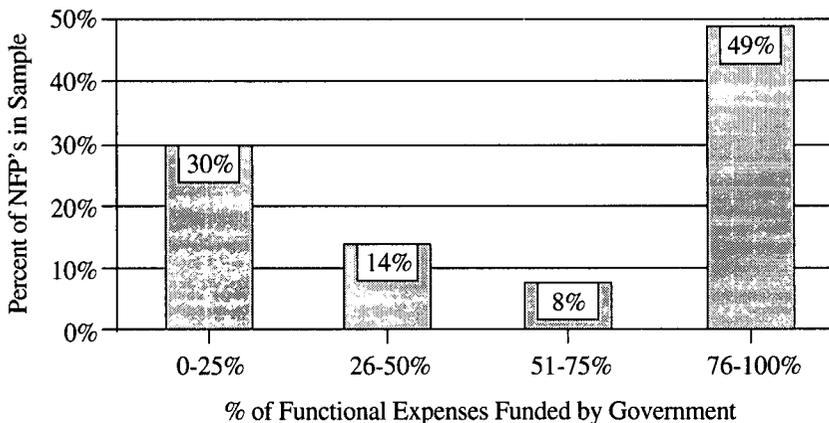
34. With the exception of “less than \$5 million,” these categories were chosen to coincide with the corresponding categories used in the ALA survey. Given the fact that the smallest NFP included in the Council’s sample had more than one and one half million dollars in functional expenses, staff did not mirror the ALA survey treatment of NFPs with less than \$5 million in functional expenses which includes five separate categories starting with “less than \$250,000.” To allow for comparability, the statistics for each of these subgroups in the ALA survey were totaled to produce statistics for a “less than \$5 million” category.

35. Percentages have been rounded to the next nearest whole number.

B. Amount of Support Received from Public Sources

Thirty-seven of the NFPs in the Council survey (66%) included required information about the amount of government support they received in FY 1994 in their 990 filing.³⁶ Most of these NFPs received a substantial portion of the funds used to pay their annual functional expenses from the Federal, State or local government. A majority of these 37 NFPs (57%) received more than half of their actual total revenues from public funds in FY 1994.³⁷ Just slightly fewer than half (49%) of these organizations relied on government monies for more than 75% of their overall functional expenses. Almost one third (32%) of the organizations providing this information derived more than 90% of the funds used to pay their functional expenses from such sources. Three organizations received more than 97% of their total revenue from governmental appropriations.³⁸ The distribution of NFPs by level of government support can be seen in Figure 4.³⁹

Figure 4
NFPs Reporting Government Support



36. Information on the total amount of government contributions or grants received by NFPs was obtained from Question 1 C of Part I of each organization's Form 990 obtained from the Charities Bureau of the New York State Attorney General's Office. Eighteen organizations (32%) left the question blank and one organization reported that it received no government contributions or grants (Harlem Dowling-West Side Center for Children and Families).

37. Data was available for 37 (66%) of the NFPs reviewed. Accordingly, the numerical totals for each category are: zero to 25% (11); 25-50% (5); 51-75% (3); and 76-100% (18).

38. The three organizations are Concord Family Services (100%), Child Development Support Corporation (98.6%), and The Miracle Makers (97.6%).

39. Percentages in the chart may not total 100% due to rounding.

IV. Findings I: Compensation Analysis

A. Comparisons to Other Not-for-Profits

1. *By Size of NFP (Functional Expenses)*

- NFPs with less than \$5 million in functional expenses paid their executive directors a median of \$70,422 — 51% more than the national median of \$46,535 for NFPs of similar size.
- NFPs with more than \$25 million in functional expenses paid their executive directors a median of \$161,141 — 22% more than the national median of \$132,392 for NFPs of similar size.
- NFPs with functional expenses between \$5 million and \$10 million paid their executive directors a median of \$82,390 — 3% more than the national median of \$80,000 for NFPs of similar size. NFPs with functional expenses between \$10 million and \$25 million paid their executive directors a median of \$103,035 — 1% less than the national median of \$103,842 for NFPs of similar size.

In two of the four size categories, compensation paid to executive directors by NFPs included in the Council survey were substantially higher than the national median for similar organizations as reported in the ALA survey. Large disparities between the Council and the ALA survey were found in NFPs with total annual functional expenses of less than \$5 million and those with more than \$25 million. According to the ALA survey, nation-wide not-for-profits with expenses less than \$5 million paid their executive directors a median compensation of \$46,535. By contrast, the median compensation for executive directors in similarly sized organizations included in the Council survey was \$70,422, a difference of \$23,887 (51%) above the national figure.

A large disparity was also found in not-for-profits with functional expenses of more than \$25 million. The median compensation for the top position in these organizations was \$132,392 nationally. The executive directors at comparable organizations included in the Council study had a median of \$161,141 — \$28,749 (22%) more than the national median.

While the median compensation paid by NFPs with functional expenses between \$5 million and \$10 million included in the Council survey exceeded the national levels reported in the ALA survey, the difference was moderate, consisting of no more than three

thousand dollars. Not-for-profits with functional expenses between \$10 million and \$25 million included in the Council survey actually paid their executive directors a median compensation less than that reported nationally in the ALA survey.⁴⁰

Figure 5
Median Compensation for Executive Directors
ALA vs. Council Survey

<i>Size Category</i>	<i>ALA Survey</i>	<i>Council Survey</i>	<i>\$ Difference</i>	<i>% Difference</i>
LESS THAN \$5M	\$46,535	\$70,422	\$23,887	51%
BETWEEN \$5M AND \$10M	\$80,000	\$82,390	\$2,390	3%
BETWEEN \$10M AND \$25M	103,842	\$103,035	-\$807	- 1%
OVER \$25M	\$132,392	\$161,141	\$28,749	22%

2. *Accounting for the Impact of Regional Differences on Compensation Levels*

One potential explanation for the existence of higher levels of compensation at NFPs included in the Council's survey over the national medians cited by the ALA survey, is that they reflect the higher cost associated with living and working in New York City. Since the IRS defines reasonable compensation in terms of compensation that would ordinarily be paid by "similarly situated organizations,"⁴¹ one would ideally want to compare the compensation paid to executive directors by NFPs included in the Council survey to those paid by other NFPs located in New York State and the Northeastern region. However, such a comparison must also take into account the size of the organization, something that the ALA survey unfortunately does not do for state and regional level data.⁴² In light of this limitation, other methods were used to approximate the degree to which the increased expenses associated

40. Percentages in the accompanying chart have been rounded to the next nearest whole number.

41. See *supra*, notes 19-21.

42. The inclusion of information on the amount of a NFP's functional expenses is needed to control for the effect that organizational size has on the compensation of executive directors. Without this information, it is impossible to determine whether the 107 NFPs included in the ALA survey from New York State all had functional expenses less than \$1 million, more than \$100 million, or, as is likely, somewhere in between.

with living and working in New York City impacted the compensation paid by the NFPs included in the Council's survey.

While there is general agreement that the cost of living in New York City is higher than the national average, there is no widely accepted measure to quantify this difference.⁴³ One method of estimating the impact of the higher cost of living on the compensation paid to executive directors of the NFPs in the Council survey is to examine the difference found in pay levels between New York City and the rest of the country for a range of occupations. The United States Bureau of Labor Statistics ("BLS") regularly monitors public and private pay levels throughout the country. Periodically BLS issues reports which express pay levels for various metropolitan reporting areas as a percentage of the national average pay level for several vocational categories.⁴⁴ The survey collects data on 14 specific white collar occupations, which are divided into three general groups: Professional, Administrative and Technical.⁴⁵ According to the 1994 BLS Compensation survey, the average pay for administrative occupations located in New York City was 9% higher than the national average.⁴⁶ The difference in the professional occupations group was a more modest 5% above the average pay for the country as a whole.

The relatively modest pay differential between New York City and national pay rates for the occupations included in the BLS pay survey has two important implications for the Council's findings. First, it suggests that the two areas where large differences were found between the Council and ALA surveys — NFPs with func-

43. The most commonly used measure of changes in national and regional prices is the Consumer Price Index (CPI) compiled by the US Bureau of Labor Statistics. However, the CPI measures the *change* in consumer prices rather than the *actual level* of prices in a particular region or city. Because of this, the CPI can not be used to compare relative living costs or consumer prices for different areas. However, the CPI *does* show that consumer prices in the New York Metropolitan area have grown somewhat faster between 1987 and 1997 than in the nation as a whole. According to the CPI which tracks urban wage earners and clerical workers, the average for all US Cities increased by 47% from January 1987 to March 1997. During this same period, the CPI for New York City increased by 53.4%, a difference of 6.4% from the national average. It should be noted that the CPI only tracks the *change* in prices over time and provides no information on the relative value of actual costs. See *Consumer Price Index: Frequently Asked Questions* < <http://www.bls.gov/cpifaq.htm>>.

44. These reports are based on the annual BLS Occupational Compensation Survey. See BUREAU OF LABOR STATISTICS, US DEPARTMENT OF LABOR, Occupational Pay Comparisons, United States, 1994, Summary 96-8 (May 1996).

45. This survey data is used by the US Office of Compensation Policy when determining locality pay adjustments for the Federal general service (GS) pay scales.

46. See BUREAU OF LABOR STATISTICS, US DEPARTMENT OF LABOR, Occupational Pay Comparisons, United States, 1994, Summary 96-7 (May 1996).

tional expenses of less than \$5 million and more than \$25 million — cannot be solely attributed to increased costs associated with living in New York City. This is especially true with NFPs of less than \$5 million included in the Council survey. Even if the difference were discounted by 9% to control for the generally higher pay received by administrative occupations in the City, the Council sample was still 39% above the national median.

Second, the application of a 9% regional pay differential means that the compensation paid to executive directors by NFPs in the \$5 to \$10 million and \$10 to \$25 million categories are actually lower than what one might expect. Roughly half of the NFPs surveyed by the Council pay their executive directors at rates lower than the ALA median compensation plus 9%, yet those directors are still subject to the increased costs associated with New York. This is the most compelling argument that the differences in pay can not simply be attributed to the expenses associated with living in the New York City metropolitan area.⁴⁷

Figure 6
Median Compensation for Executive Directors
ADJUSTED using the BLS 9% Pay Differential

<i>Size Category</i>	<i>ALA Survey+9%</i>	<i>Council Survey</i>	<i>\$ Difference</i>	<i>% Difference</i>
LESS THAN \$5M	\$50,723	\$70,422	\$19,699	39%
BETWEEN \$5M AND \$10M	\$87,200	\$82,390	-\$4,810	-6%
BETWEEN \$10M AND \$25M	\$113,188	\$103,035	-\$10,158	-10%
OVER \$25M	\$144,307	\$161,141	\$16,834	12%

B. Comparisons to the Public Sector

- Over 29% of all NFPs paid their executive directors more than the typical City Commissioner, who earned \$110,000 in FY 1994.
- Sixteen percent (16%) of all NFPs paid their executive directors more than the Mayor, who earned \$130,000 in FY 1994.
- Sixty-three percent (63%) of executive directors at NFPs with functional expenses of more than \$25 million were paid more than New York City's Mayor.

47. Percentages in the accompanying chart have been rounded to the next nearest whole number.

A 1994 report, issued by the New York State Comptroller, on compensation of executive directors in nonprofit organizations with contracts from the New York State Office of Mental Health, noted that the amount of compensation paid to executive directors should be limited since part of the expectation of operating a not-for-profit is that the organization provides a public service.⁴⁸

Compensation paid to executive directors at many NFPs included in the Council survey surpassed that paid to top public officials responsible for much larger organizations which often perform similar or related functions. The City's DMH and DSS/HRA Commissioners⁴⁹ both received a salary of \$110,000 for managing complex organizations with respective annual expenditures of \$245 million (270 employees) and \$7.56 billion (23,203 employees) in FY 1994.⁵⁰ The City's DFTA Commissioner earned less, receiving \$97,000 in 1994 for running an agency employing 336 workers and responsible for \$162 million in annual expenditures.

All but one of the NFPs included in the survey fall far short of the size and complexity of these City agencies.⁵¹ Yet, the median compensation paid to executive directors at organizations with more than \$25 million in functional expenses was \$161,141. This is \$51,141 more than the pay of the DMH and HRA commissioners and \$64,141 more than that earned by the head of DFTA.

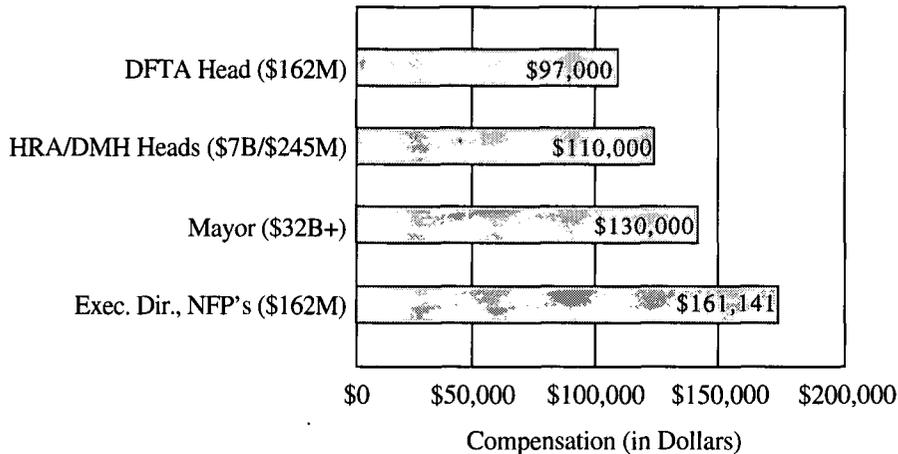
48. See STUDY OF EXECUTIVE COMPENSATION IN NFP CORPORATIONS, *supra* note 27, at 15.

49. The positions of DSS Commissioner and HRA Administrator are held by the same person. This reflects the fact that HRA was created to supervise and coordinate DSS programs in several areas.

50. For agency expenditure data, see NEW YORK CITY COMPTROLLER, COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED, JUNE 30, 1994 105-06 (1995) [hereinafter COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FY 1994]. For agency headcount data, see OFFICE OF THE MAYOR, THE MAYOR'S MANAGEMENT REPORT, FINAL, FY 1994. Salary information was obtained from THE 1993-1994 GREEN BOOK: THE OFFICIAL DIRECTORY OF THE CITY OF NEW YORK.

51. The one exception is The Legal Aid Society which had total functional expenses of approximately \$165 million in FY 1994.

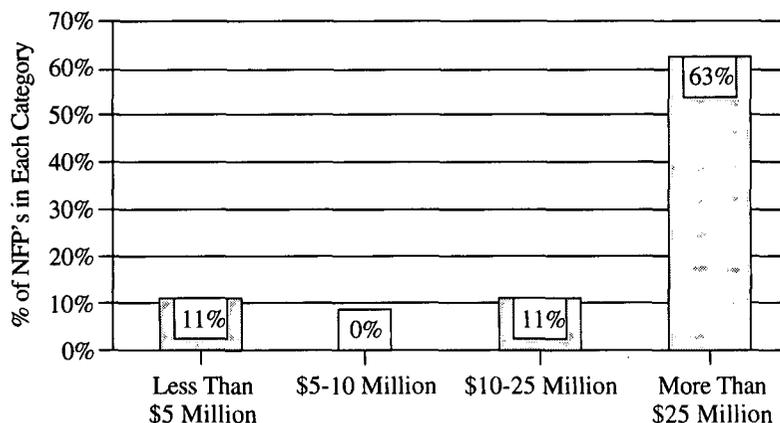
Figure 7
Median Compensation for Executive Directors of NFPs
(with Functional Expenses of More than \$25 Million)
Compared to that of the Mayor and City
Commissioners in FY 1994



In fact, of the not-for-profits examined, 16 organizations (29%) paid their executive directors more than that earned by a typical city commissioner in FY 1994. An even greater contrast between financial compensation and job responsibility becomes apparent if executive director compensation is compared to the \$130,000 earned by the Mayor of the City of New York.⁵² Despite the fact that the Mayor is responsible for the administration of the nation's largest city government with annual expenditures in excess of \$32 billion, nine of the NFPs in the Council sample (16%) paid their executive directors more than the Mayor.

52. This figure reflects the Mayor's base salary during 1994, the latest year for which comparison data on all sources was available at the time the survey selection was conducted. In 1995, Local Law 92 amended the City Charter to increase the Mayor's salary to \$165,000 effective July 1, 1995.

Figure 8
Percentage of NFP Executive Directors in each Size Category with Compensation in Excess of that Received (by the Mayor in FY 1994 (\$130,000))



C. Comparisons within the Survey Sample

1. Comparing Compensation Amounts

- Compensation for executive directors at NFPs with functional expenses of less than \$5 million ranged from a low of \$28,284 to a high of \$169,395, a difference of \$141,111 (499%).
- Compensation for executive directors at NFPs with functional expenses between \$5 million and \$10 million ranged from a low of \$43,770 to a high of \$103,115, a difference of \$59,345 (136%).
- Compensation for executive directors at NFPs with functional expenses between \$10 million and \$25 million ranged from a low of \$70,321 to a high of \$166,930, a difference of \$96,609 (137%).
- Compensation for executive directors at NFPs with functional expenses of more than \$25 million ranged from a low of \$79,750 to a high of \$245,802, a difference of \$166,052 (208%).

A third method of analysis is provided by juxtaposing how the executive compensation paid by the individual not-for-profits examined in the Council survey compares against the median executive compensation paid by organizations of similar size included in the Council's review. This measure, along with the ALA and pub-

lic sector comparisons is included in the individual organizational profiles provided for each not-for-profit included in the survey.⁵³

The compensation paid to each of the organizations' executive directors was compared to the median for organizations with similar functional expenditures included in the Council survey. To facilitate this comparison, dollar differences between the compensation paid by each NFP included in the survey and the median paid by organizations in the same size category were calculated. This information, along with a ranking of the amount of compensation paid by each organization grouped by size, is found in the charts on the pages 25-28.

This analysis reveals the existence of large differences between the compensation paid to executive directors within size categories. As was the case with other measures discussed earlier in this report, the greatest disparities involved organizations with functional expenses of less than \$5 million and more than \$25 million. Compensation paid to executive directors at NFPs with functional expenses of less than \$5 million included in the survey ranged from a low of \$28,284 paid by the Association to Benefit Children, to a high of \$169,395 at Inwood House.⁵⁴ Three other organizations in this category paid their directors \$25,000 or more above the Council survey median.

53. See Appendix A attached to the originally published version of this report, on file with O&I, for copies of these profiles.

54. Inwood House changed executive directors during FY 1994. Thus its Form 990 filing for this year was atypical. The organization actually listed two individuals under the title of executive director, both described as being full time employees, resulting in a grand total of \$245,152 compensation paid for this position. The Form 990 lists one executive director, Natalia Ritter, as receiving \$169,395, and the second executive director, Antiss Agnew, as receiving \$75,757. In the interests of comparability, the protocols of the study call for the identification of the *single* individual most responsible for the leadership of the organization during the study time frame, FY 94. Since Ms. Ritter served as executive director for majority of FY 94 (retiring from this position eight months into the fiscal year), she was identified as Inwood House's executive director for the purposes of this study. Subsequent to this decision information was provided to the Council by Inwood House explaining that the compensation listed for Ms. Agnew, the incoming director, included monies paid to her in her role as *deputy* director under Ms. Ritter.

According to information later supplied by Inwood House, but not included in the organization's IRS Form 990 filing, Ms. Ritter's compensation of \$169,395 consisted of a salary of \$85,000, (pro-rated to Ms. Ritter's retirement on February 28, 1994 to be \$58,966); compensation for accrued vacation days in the amount of \$3,099; a contribution to a tax deferred account plan of \$9,500; and retirement compensation of \$97,830. According to Inwood House, the retirement compensation (a payment to Ms. Ritter in addition to her participation in Inwood House's pension plan) and the contribution to the tax deferred account plan, totaling \$107,330, was drawn from Inwood House's endowment fund.

Large differences in compensation were also found in the largest NFPs in the Council survey. The compensation for executive directors at NFPs with functional expenses of more than \$25 million ranged from a low of \$79,750 paid by the Metropolitan NY Coordinating Council on Jewish Poverty to a high of \$245,802 at NYSARC, a range of \$166,052. NYSARC paid \$84,661 above the median compensation for NFPs larger than \$25 million. The organization offering the next highest compensation in this group, the Jewish Board of Family and Children Services, paid its executive director \$177,308 in 1994, slightly more than \$16,000 above the median for the category.

2. *Comparing Total Compensation: Benefits and Expenses*

In addition to compensation, the IRS requires NFPs to submit information in the 990 filing listing the amount paid to their executive directors as contributions to employee benefit plans (“CEBP”) and the amount for expenses.⁵⁵ Many of the NFPs included in the sample did not complete all portions of the Form 990 which requests detailed information regarding the NFP’s CEBP and expense account contributions.

While this factor prevented staff from using total compensation (compensation plus CEBP and expenses) as its principal measure, an examination of total compensation, where possible, does offer some important advantages. By definition, an examination of total compensation provides a more accurate depiction of the total remuneration paid by NFPs. By examining total compensation, it is possible to report on organizations which may supplement compensation to their executive directors with large benefits packages. The following section of the report will briefly review the contributions made to executive directors benefits plans by those NFPs in the Council survey which reported having such programs in place.

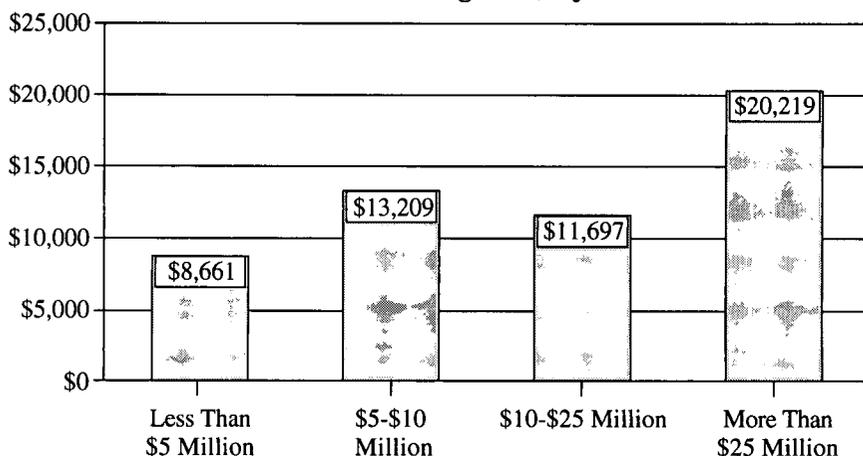
a. *Contributions to Employee Benefit Plans*

Although NFPs are required to provide information on benefits on their Form 990, 27% (15) of the NFPs in the Council survey did

55. NFPs are required to submit information on employee benefit plans and similar benefits in Part V, Column D of Form 990. This category covers medical, dental, life insurance and disability benefits among others. Also included in this category are all forms of deferred compensation and *future* severance payments. NFPs are required to submit the amount paid to their executive directors for expenses (taxable and non-taxable fringe benefits) in Part V, Column E of Form 990. See Internal Revenue Service, *supra* note 19, at 18.

not report this information.⁵⁶ The number and value of benefits received by executive directors of the NFPs included in the Council's sample varied greatly. Twenty-eight of the 56 organizations reviewed (50%) provided their executive director with some type of CEBP benefit. Ten organizations (18%) reported that they did not provide their executive directors with any CEBP benefits.

Figure 9
Average Value of Executive Director's CEBP
At NFPs with CEBP Programs, by Size of NFP



Where paid, CEBP ranged from a high of \$35,786 paid by the Jewish Board of Family and Children's Services to a low of \$1,080 at Concord Family Services. The average CEBP went from \$8,661 at NFPs with functional expenses of less than \$5 million to \$13,209 for organizations with functional expenses between \$5-\$10 million. This figure dipped slightly to \$11,697 for NFPs with functional expenses of \$10-\$25 million and jumps to \$20,219 for organizations with more than \$25 million in annual functional expenses.

b. Expense Accounts

Even fewer NFPs provided information on whether expense accounts were provided to their executive directors. Twenty-three of the 56 organizations (41%) included in the Council survey left blank the section of the Form 990 which asks whether the NFP provided its executive director with money for expenses. Thirty NFPs (54%) stated that they did not provide funds directly to their

56. In addition, three other NFPs — Graham Windham, The Legal Aid Society, and New Alternatives for Children — did not provide specific values for CEBP.

executive directors for expenses. The three organizations (5%) which provided their executive directors with payment for expenses included the Jewish Board of Family and Children Services (\$10,249), the Miracle Makers (\$4,000), and the East Side Settlement House (\$2,206).

3. *Comparing Compensation as a Percentage of Expenses*

Examining executive compensation in terms of a percentage of the organization's overall functional expenses offers another opportunity to compare an individual NFP against organizations of similar size in order to assess whether the compensation is reasonable. One would expect that this percentage would decrease as organizations increase in overall size. Therefore, comparisons are primarily limited to organizations within the same size category. Of the 56 organizations in the sample, one organization, Unique People Services, devoted an amount equivalent to over five percent of its functional expenses to executive director compensation.

The greatest amount of variation in the compensation/functional expense ratio existed among organizations with less than \$5 million in functional expenses. Unique People Services, a provider of mental health services based in the Bronx, devoted the largest percentage of its functional expenses to the compensation of its executive director — 5.5%. This was more than nine times the 0.6% spent by the Association to Benefit Children, and more than double the average percentage (2.3%) spent by other NFPs in the same size category.

The \$5-\$10 million and \$10-\$25 million categories show considerably less variation in executive director's compensation as a percentage of functional expenses. The highest paying NFP in both of these categories allocated no more than three times the amount spent by the NFP which devoted the lowest percentage of functional expenses to executive compensation. In the more than \$25 million category, three organizations (including NYSARC which paid its executive director the highest compensation of all NFPs included in the survey) spent five times the percentage paid by The Legal Aid Society.

Figure 10

NFPs less than \$5 million		NFPs between \$10 - \$25 million	
Organization:	FE*	Organization:	FE
Unique People Services	5.5%	South Bronx Mental Health Council	1.3%
Inwood House	4.8%**	Brooklyn Bureau of Community Service	.9%
Aging in America	3.9%***	Green Chimneys Children Services	.9%
Lower East Side Family Union	3.2%	Talbot Perkins Children's Services	.9%
New Alternatives for Children	3.1%	Lakeside Family and Children's Services	.8%
Associated YM-YWHAs of Greater New York	2.9%	The Richard Allen Center on Life	.8%
East Side House Settlement	2.5%	Louise Wise Services	.7%
Concord Family Services	2.3%	Brookwood Child Care	.7%
Coalition for Hispanic Services	2.2%	Abbott House	.6%
Alianza Dominicana	2.0%	Good Shepard Services	.6%
Rena Day Care Center	1.7%	Society for Seamen's Children	.6%
Bedford Stuyvesant	1.6%	St. Christopher's — Jennie Clarkson	.6%
George Junior Republic Association	1.5%	Berkshire Farm Center Service for Youth	.5%
Community Access	1.4%	The Children's Village	.5%
Fort Greene Senior Citizens Council	1.0%	Edwin Gould Services for Children	.5%
Friends of Crown Heights Day Care	1.0%	Episcopal Mission Society	.5%
Yeled V'Yalda Early Childhood	1.0%	Harlem Dowling - West Side Center	.5%
Association to Benefit Children	0.6%	Sheltering Arms Children's Service	.5%
		The Miracle Makers	.4%
NFPs between \$5 - \$10 million		NFPs more than \$25 million	
Organization:	FE	Organization:	FE
University Settlement Society of New York	1.7%	The Children's Aid Society	0.5%
Ohel Children's Home & Family Services	1.6%	Graham - Windham	0.5%
The Hudson Guild	1.4%	NYSARC	0.5%
Transitional Services for New York	1.4%	Self-help Community Services	0.4%
Forestdale	1.3%	Leake and Watts Services	0.3%
Child Development Support Corporation	1.0%	Metropolitan New York Coordinating Council	0.3%
Central Brooklyn Coordinating Council	0.9%	Jewish Board of Family and Children	0.2%
Family Support Systems Unlimited	0.8%	The Legal Aid Society	0.1%
Puerto Rican Association for Community Affairs	0.8%		
Colony South Brooklyn Houses	0.6%		
Edwin Gould Academy	0.6%		

* FE is an acronym for Functional Expense

** This organization's compensation/FE ratio should be viewed with caution because the compensation amount reported in Inwood House's Form 990 includes a large severance payment disbursed from the organization's endowment rather than the general operating funds.

*** This organization's compensation/FE ratio should be viewed with caution because the executive director of Aging in America also served as the head of an affiliated organization Morningside Nursing Home (MNH) which contributed to his salary. However, MNH filed its own Form 990, and thus under the protocols of this study is viewed as a separate organization.

V. Findings II: Public Access to NFP Annual Returns

The second major component of the Council's study of executive compensation consisted of an examination of the potential accessibility of NFP annual returns that are required to be available to the public by Federal law.

A. The Legal Requirements of Public Access to Annual Returns

Most organizations which are tax-exempt under section 501(c)(3) of the Federal Tax Code are required to file annual financial returns. Such returns are filed in lieu of tax returns submitted by for profit corporations and disclose a NFP's revenue, expenses and other financial information in some detail. Section 6104 (e) of the Federal law requires that NFPs make their annual return available to the public. New York State law also requires that such information be filed with the State Attorney General's Office.⁵⁷

Prior to 1996, members of the general public who were interested in viewing an organization's annual return were required to either request the filing from the State⁵⁸ or visit the principal office of the organization, where a copy of the return for the three most recent years was required to be made available for inspection.⁵⁹ Under this inspection requirement NFPs were not obligated to provide the public with copies of their annual returns, but were required to make the information available for public viewing.

However, legislation passed by Congress in July of 1996 and signed by President Clinton, the "Taxpayer Bill of Rights 2,"⁶⁰ substantially modified this requirement. This measure was designed to give the Federal government additional tools in the enforcement of the country's tax laws to curb excessive pay and other perceived problems at NFP organizations. The legislation, commonly known as the "intermediate sanctions law," instituted several additional prohibitions and controls concerning executive compensation including considerably more rigorous public disclosure requirements.⁶¹

57. N.Y. EXEC. LAW § 172-b (McKinney 1993 & Supp. 1997-98); *see also supra* note 16.

58. *See* N.Y. EST. POWERS & TRUSTS LAW § 8-1.4(l) (McKinney 1992 & Supp. 1997-98); *see also supra* note 16.

59. *See* 26 U.S.C. § 6104(e) (1994) (amended 1996).

60. Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996).

61. Harmon, Curran & Spielberg, What the 'Intermediate Sanctions' Law Means For Non-profit Organizations <<http://www.afj.org/fai/intermed.html>> [hereinafter What the Intermediate Sanctions Law Means].

In addition to preserving the inspection requirements under the prior law, the new law requires that all NFPs provide a copy of (not just access to) the organization's annual return to anyone who requests it. If the request is made in person, the NFP must provide a copy immediately. If the request is made in writing, the NFP has thirty days to comply.⁶² In addition to increasing the availability of an organization's annual returns, the new law also increased the penalties for failing to make this information available. Under the prior law, an organization which willfully failed to make its annual returns available for inspection was subject to a fine of \$1,000 per application.⁶³ The new law increased this penalty to \$5,000 per application.⁶⁴

B. Public Access Survey Methodology

Between March 18, 1997 and May 13, 1997, Council staff administered a telephone survey to all 56 NFPs included in the Council's compensation review. The aim of the survey was to assess whether the public might be able to access information contained in the NFP's 990 filing in person and through the mail. Callers asked whether it would be possible to visit the NFP's office to look at the organization's annual returns, and if the NFP would be willing to mail the 990 filing upon request.⁶⁵ The Council's survey was not intended to be, nor should it be interpreted as, an attempt to determine compliance with the provisions of the Taxpayer Bill of Rights 2. That would have required visiting the offices of each NFP and making a written request to each organization.

As a result of responses to staff calls by representatives of the NFPs, each organization was assigned to one of three categories: (1) NFPs which told the caller that it was not possible to write to and visit the NFP to obtain access to the organization's annual returns; (2) NFPs which told the caller that the public was able to

62. The new law permits NFPs to charge a "reasonable fee" to cover the expense of copying and mailing the annual return. The law also provides for two exceptions to the requirement that NFPs must provide copies of the annual return: (1) an organization is not required to provide copies of these documents if the NFP has already made the documents "widely available;" (2) an organization is not required to comply with this requirement if it is the subject of a "harassment campaign." In both cases the NFP can seek an exemption from the IRS. See 26 U.S.C.A. § 6104 (e) (West Supp. 1998).

63. 26 U.S.C. § 6685 (1994) (amended 1996).

64. 26 U.S.C.A. § 6685 (West Supp. 1998).

65. According to a representative from the Internal Revenue Service, the IRS is currently considering how to treat requests for annual returns made only over the telephone and expects to issue a statement concerning the issue this summer.

write to or visit the NFP to obtain this information from the NFP; and (3) NFPs for which staff was unable to obtain a definite answer about whether the organization would provide this information.

Despite repeated attempts, staff was unable to obtain definite answers from 19 of the 56 (34%) NFPs included in the Council survey. In most cases where the survey was not completed, the caller was either told to call back or they were referred to someone who was either repeatedly unavailable or who promised to call back and did not do so. In many cases, organizations which did not respond were called four or five times to no avail.⁶⁶ The findings presented in this section concerning public access reflect the 37 NFPs which provided a definitive answer concerning whether the public could obtain the requested information directly from the NFP.

1. Survey Protocols

Staff followed standardized written protocols in which they stated that they were interested in gaining access to the organization's annual returns including information on the salary of the organization's executive director. In order to simulate the type of response that would be encountered by a member of the public, callers did not identify themselves as Council staff. Each organization's main telephone number was called. If the call was answered by a secretary or receptionist, staff asked to be connected to someone in the organization who could respond to the inquires being made about the public's access to the NFP's annual returns. In those cases where the caller was told that the information was confidential or not available, the caller was instructed to state that he or she believed that the information was required to be made available to the public. If the representative of the NFP continued to insist that the information was confidential, the NFP was recorded as indicating that they would not provide access.

C. Public Access Survey Findings

- Ninety-two percent (34) of the 37 NFPs which completed the telephone access survey told callers that it was not possible to write to and visit the NFP to obtain access to the organization's annual return.

66. In order to be considered as "completing" the access survey, a representative of a NFP had to provide the caller with a definitive answer about the availability of the organizations annual returns and information on the executive director's salary.

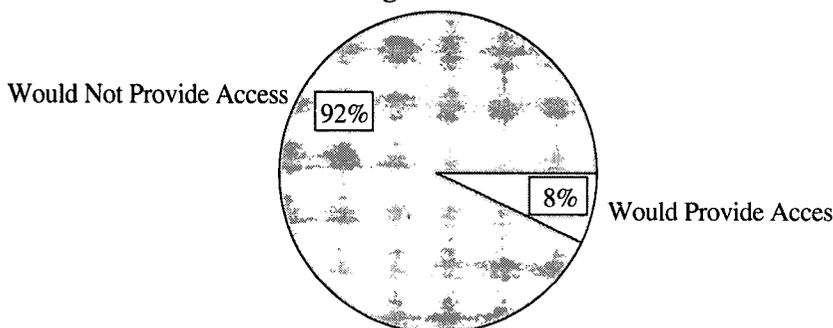
- Eight percent (3) of the 37 NFPs which completed the telephone access survey told callers that it was possible to write to and visit the NFP to obtain access to the organization's annual return.

Of the 37 organizations which provided a response to questions concerning the availability of the organization's annual return 92% (34 NFPs) told callers that they do not provide the public with access to this information. This number included NFPs whose representative told the caller that this information was simply unavailable, as well as those who referred the caller to another source such as the State Attorney General's office but stated that the caller could not obtain this information by visiting the NFP directly or could not have such documents mailed to them. Only three of the 37 organizations answering our request (8%) told callers that they could visit the NFP's offices during business hours to obtain the NFP's annual returns or that a copy of the appropriate documents could be mailed to them.

1. Public Access to Annual Returns at 37 NFP Organizations

The Council's access survey provided numerous examples of callers that were told that information about the executive director's salary was not available. Responding to a request for information on how to obtain information on the salary paid to the executive director of the Society for Seamen's Children, the director of human relations replied: "I don't think that's any of your affair. I don't think that you need to know that information. I'm not willing to disclose it."

Figure 11



A representative from Leake and Watts Services also left a caller with the impression that the organization's annual returns were privileged and not available to the general public: "Our financial

information is not available to the public. [Caller: None of your financial information?] Not to the public. No. That's confidential information that's only distributed to certain people. Not to the public."

Not all of the 34 NFPs that indicated that they would not provide access to the organization's annual returns responded to the requests for information in the same manner. Of this number, 19 organizations (56%) told callers that information on the NFPs executive director was "not available," "confidential" or "extremely confidential" and did not refer the caller to any other source. Fifteen NFPs (44%) referred callers to another source such as the State Attorney General's Office or the IRS. However, referrals often lacked specificity and in several cases the information was so general so as to be of questionable use. Many of the NFPs falling in this group only told callers that the information was available from "the State."

On other occasions, the information provided was simply inaccurate. For example, the comptrollers of several NFPs contacted informed staff that information on the executive director's salary was available under the Freedom of Information Law ("FOIL"). FOIL requests are typically used to obtain information from governmental entities. A FOIL request is not required to examine or obtain a NFP's Form 990.

Callers were often questioned as to why they desired this information. A caller contacting the Ohel's Children Home and Family Services was told he could not visit the NFP to obtain the executive director's salary without a better reason than just "personal interest." In some cases, callers were disparaged for asking whether this information was available.

Figure 12
Access Survey
Direct Calls to NFP Providers
NFPs Stating it Was Not Possible to Write to and Visit the NFP
to Obtain Access to the Organization's Annual Return

34 NFPs:

- Abbott House
- Associated YM-YWHAS of Greater New York
- Association to Benefit Children
- Bedford Stuyvesant Early Childhood Development Center
- Berkshire Farm Center Service for Youth
- Brooklyn Bureau of Community Service
- Colony South Brooklyn Houses
- Concord Family Services
- East Side House Settlement
- Edwin Gould Services for Children
- Episcopal Mission Society
- Jewish Board of Family and Children's Services
- Family Support Systems Unlimited
- Forestdale
- Fort Greene Senior Citizens Council
- Friends of Crown Heights Day Care
- George Junior Republic Association
- Good Shepard Services
- Graham-Windham
- Inwood House
- Lakeside Family and Children's Services
- Leake and Watts Services
- Lower East Side Family Union
- Ohel Children's Home & Family Services
- Rena Day Care Center
- Sheltering Arms Children's Service
- Society for Seaman's Children
- South Bronx Mental Health Council
- St. Christopher's - Jennie Clarkson Child Care Services
- The Children's Aid Society
- The Children's Village
- The Richard Allen Center on Life
- University Settlement Society of New York
- Yeled V'Yalda Early Childhood

Figure 13
Access Survey
Direct Calls to NFP Providers

**NFPs Stating it *Was Possible* to Write to and Visit the NFP to
Obtain Access to the Organization's Annual Return**

3 NFPs:

- The Hudson Guild
- The Legal Aid Society
- New Alternatives for Children

Figure 14
**NFPs Which Did Not Provide a Definitive Answer
Regarding Public Access**

19 NFPs:

- Aging in America
- Central Brooklyn Coordinating Council
- Child Development Support Corporation
- Coalition for Hispanic Family Services
- Community Access
- Alianza Dominicana
- Edwin Gould Academy (a.k.a. The Gould Academy)
- Green Chimneys Children's Services
- Harlem Dowling - West Side Center for Children and Family Services
- Louise Wise Services
- Metropolitan NY Coordinating Council on Jewish Poverty
- NYSARC
- Brookwood Child Care
- Puerto Rican Association For Community Affairs
- Self-help Community Services
- Talbot Perkins Children's Services
- The Miracle Makers
- Transitional Services For New York
- Unique People Service

