

- Excessive Compensation ● Private Inurement Prohibition ● Disqualified Persons
 Intermediate Sanctions ● Excess Benefit Transactions ● Comparability Data
 ● Rebuttable Presumption ●

Year	Time Table for IRS Scrutiny and Key Events for Non-Profit Compensation
2007	The IRS releases its much anticipated Report on Executive Compensation Compliance Initiative and concludes that there is a need for a continued enforcement presence in the non-profit executive compensation area. IRS proposes excise tax assessments that exceed \$21M against 40 disqualified persons or organization managers.
2008	Large non-profits are the first to be required to complete the revised IRS Form 990 to provide more clarity regarding the way executive compensation is defined and delivered.
2009	The IRS further clarifies governance and compensation disclosures and makes it clear that the IRS wants to know, in line 9 of Form 990 Schedule J, if the organization uses the full rebuttable presumption process.
2010	The IRS conducts 11,445 audits of non-profits, a 12% jump from 2009. 100 more auditors are added since 2008. The agency announces that employment tax will be a major focus in 2011.

Source: http://www.irs.gov/pub/irs-tege/exec_comp_final.pdf

While the above terms may sound intimidating and the time table of IRS events may seem like a run-away train, there are opportunities from which each non-profit can benefit. The first opportunity is in the process of rebuttable presumption. The IRS has provided a step-by-step process for non-profits to reach a type of safe harbor – a “rebuttable presumption” – to provide the explanation that payments under a compensation arrangement are presumed to be reasonable. Three conditions must be met for a rebuttable presumption, summarized as:

- Compensation transactions were approved by an authorized body (e.g., Board of Directors or Trustees, etc.) of the organization that is composed of individuals who do not have a conflict of interest concerning the transaction;
- The authorized body obtained and relied on appropriate comparability data prior to making its determinations;
- The authorized body adequately documented the basis for its determination concurrently with making that determination.

The second positive is that Boards can use the new disclosure rules as an opportunity to revisit the organization’s compensation philosophy. While “philosophy” may seem like a pie-in-the-sky term, it is important because it defines the criteria on which board members and executives can rely to make pay decisions. The definition of labor market, desired positioning of the organization’s compensation against that of similar organizations, and the mix of base salary and variable compensation are all part of a compensation philosophy. When applied to disqualified persons, these guidelines can support arguments against intermediate sanctions and excess benefit penalties.

Proactive non-profit boards are taking advantage of the IRS’ rebuttable presumption process and in so doing are also finding benefits in the conversations and information exchange around compensation philosophy, motivation, and the linkage to the organization’s mission and strategic goals. **HR+Survey Solutions** is a resource for board members and executive directors to help reach rebuttable presumption through providing comparability data; we also evaluate pay practices and design more effective compensation programs. Learn more about our company by visiting www.hrssl.com or calling Judy Canavan, at 866-252-6788 x902.