

Pay Data For ‘Similarly Qualified Persons In Comparable Positions At Similarly Situated Organizations’ — We’ve got that... don’t we?

By Michael Conover

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Valid information on competitive pay levels and practices for “... similarly qualified persons in comparable positions at similarly situated organizations” has long been the basis for responsible management, and Internal Revenue Service (IRS) enforcement, of appropriate pay practices among all tax-exempt organizations.

When the IRS Intermediate Sanctions (Internal Revenue Code 4958) were enacted, the importance of good comparative data was underscored by its inclusion as one of the three elements of the protection offered in the Rebuttable Presumption of Reasonableness. The data provides a critical context for determining how much and how to pay a nonprofit’s executives.

Regardless of its importance, however, many organizations fail to devote the attention to this important element of their compensation program that it deserves. We regularly work with organizations that have difficulty describing or producing the data used as the basis for executive pay decisions. References are made to “a report done a while ago,” “a survey we had,” or “some Form 990s from organizations like us.” Examining the Form 990s and Schedule Js of these same organizations, we find they have checked all the appropriate boxes related to these data sources and yet there is little or nothing to be found.

Another group of organizations we find has a different competitive data issue. They have competitive data to offer as the basis of compensation decisions, but there

are serious issues about the quality and comparability of the data being used. The data may be drawn from organizations that are not at all comparable, positions that are marginally similar or based on such a small sample that the data’s validity is very questionable. In these situations, this poor data may be as bad, or possibly worse, than having no data at all because it may lead to problematic pay decisions.

Obtaining and properly using good data for compensation purposes requires some thoughtful examination of your organization, its positions, and the requirements for individuals holding those positions. Only after accurately understanding your own circumstances can a search begin for the sources of valid data needed. Areas that need to be explored include:

- **Details of your organization:** This information includes the type of service(s) your organization performs as well as the broad organizational metrics that reflect its size and scope (e.g., revenue, operating budget, total assets, number of employees, etc.). These are usually among the factors most readily used for identifying similar organizations.
- **Primary role(s) of your position(s):** Competitive data sources (surveys, Form 990s, etc.) usually offer only brief descriptions of positions and generic titles for job-matching purposes so the focus here is on the central focus and impact of your position in terms of overall impact on the organization. The chief/principal executive officer and chief/principal financial officer

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positions tend to be very similar from one organization to another and are Disqualified Individuals from an Intermediate Sanctions perspective. Therefore, they are routinely included in competitive data needs. Ensure you note any significant difference in the role played by your position vs. the typical benchmark. The presence of an additional role not associated with the typical benchmark for the position (or the absence of some portion of the role commonly associated with it) must be taken into account to ensure appropriate comparisons will be made.

- **Position requirements:** The emphasis on position requirements is intentional. The purpose is to focus on the essential education, expertise, and experience required to perform the role, not what the current incumbent happens to have or acquired in the role. For example, the fact that the current receptionist has five years of experience at the front desk does not mean that five years is a requirement for a qualified incumbent. On the other hand, your position may require a type of professional certification, education, or experience that is unique and essential for successfully performing the role. For example, an individual holding the position of executive director in an association of athletic coaches and involved with external organizations regulating the conduct of the sport must have credible experience in the sport.

Armed with an accurate understanding of your own organization and the positions that will be examined in the competitive compensation assessment, attention now is focused on the identification of the data that will be sought for use in the analysis. The process follows the same criteria referenced above in the descriptors of your organization and positions, as follows:

- **Organizations selected for inclusion in the analysis:** Typically, these are organizations offering the same types of services that your organization provides. In some instances, there are other types of organizations, perhaps even for-profit ones that employ and compete for executive resources that are very similar to your specific organization. These can also be included in the search for competitive data. Compensation surveys are conducted among many different types of nonprofit organizations (e.g., higher education, social service organizations, professional/trade organizations, philanthropic foundations, etc.). In addition, Form 990 filings from other organizations like yours are also a source of competitive data. If necessary, a custom survey and/or consultant may be required to obtain data for specialized/hard-to-find sources of data.

The size and scope of organizations included in the analysis must be comparable to your organization.

Revenue and budget levels for a group of organizations ranging from 50 percent to 200 percent of your size are typically viewed as reasonable for inclusion. Of course, care must be taken to avoid “skewing” the data in the direction of organizations much larger than your own.

I often explain the objective for identification of comparable organizations as comparing “apples to apples” but doesn’t necessarily need to be as specific as comparing McIntosh to Fuji.

- **Selection of benchmark positions:** Positions selected for comparisons should closely resemble the role described in your organization. Titles alone may not fully describe a position’s role or they may be misleading. A controller may be the chief/principal financial officer or a subordinate, depending on the data source in question. In those cases where a significant difference has been identified between your position and the external benchmark, it may be advisable to make adjustments (upward or downward) to competitive data to appropriately compare them.
- **Special position requirements:** Bona fide requirements for your organization’s position that are not typically associated with the benchmark position may also require an adjustment to competitive data in order to produce an appropriate comparison.

Collecting this information about your organization and the external benchmarks planned for use prior to an analysis of competitive compensation is not the end of this process. Two critical steps remain. First, it is important to engage the organization’s governing body (e.g., board, compensation committee) and involve them in a review of this information and affirmation/modification of it for use in the analysis. Involving the independent members of the organization in the process performs a very helpful educational role about compensation and the importance of good competitive data. It also enlists individuals with a critical oversight role in the governance of pay in an independent validation of the plan to secure the data before it is collected. A sound rationale has been prepared and ratified for the analysis of competitive data which board and management should view as valid for this purpose.

Second, this description of your organization and positions, as well as the external benchmark criteria or the comparative framework, should be documented. It will become part of the other important documents maintained to support the compensation program (e.g., board minutes, compensation strategy/guiding principles, etc.). The framework should be reviewed periodically and updated as needed to ensure its continued relevance to

your organization as well as the external marketplace(s) in which you compete for executive resources.

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