



# ISSUE GUIDE

## *What's the Issue?*

NEW YORK STATE

## **Limits on Non-Profit Executive Compensation**

### ***Background:***

In 2011, a *New York Times* exposé focused public attention on the multi-million dollar pay packages and questionable accounting of a single Medicaid-funded nonprofit serving the developmentally disabled. Shortly thereafter, Gov. Andrew Cuomo issued Executive Order 38 limiting total annual nonprofit executive compensation to \$199,000.

The debate over what is “reasonable” compensation for nonprofit executives is not new. The questions remain:

- When receiving taxpayer funds, should organizations in contract with government (whether for-profit or nonprofit) be subject to regulation of compensation levels for their most senior executives?
- Are certain kinds of work on behalf of government (human services v. highway construction) inherently linked to concepts of social justice and charity, and therefore it is more appropriate for government to insist that nonprofit executives receive compensation at levels that are less than the for-profit sector?
- Even if higher levels of compensation do produce increased levels of performance in nonprofits (widely accepted research has not been able to substantiate this hypothesis), do excessive levels of nonprofit executive compensation undercut the credibility of the sector in other ways?

Gov. Cuomo’s executive order states: “To the extent practicable, reimbursement with State financial assistance or State-authorized payments shall not be provided for compensation paid or given to any executive by such provider in an amount greater than \$199,000 per annum, provided, however, that the commissioner of each agency shall have discretion to adjust this figure annually based on appropriate factors and subject to the approval of the Director of the Budget, but in no event shall such figure exceed Level I of the federal government's Rates of Basic Pay for the Executive Schedule promulgated by the United States Office of Personnel Management.” As the regulations have been developed by individual state agencies, they have been written to allow organizations to apply for waivers if compensation studies show that higher levels of compensation in comparable organizations in their field warrant pay packages over \$199,000.

**Arguments FOR:**

- ✓ Over the years, there have been enough examples of alarming levels of executive compensation at nonprofits – which should be dedicating such funds to serve our state’s people – that it makes sense to go beyond existing law to put hard limits on executive pay.
- ✓ Tax payer funds should be directed first and foremost to services for New Yorkers in need, not to excessively reward executives, regardless of how their leadership improves the performance of the organization.
- ✓ The link between organizational performance and levels of compensation over certain basic levels is weak.

**Arguments AGAINST:**

- Large, complex nonprofits like hospitals, universities and multi-service agencies require the same level of management expertise as similarly dynamic for-profit entities, and thus similar levels of compensation.
- Excessive compensation is far from the norm. Under-compensation – especially in relation to executives doing similar work in the for-profit sector – is well-documented and may contribute to lower organizational performance stemming from the challenges of bringing top talent to management.
- A hard cap on salary is overly constraining and may have unintended consequences. Caps on compensation may just end up producing creative workarounds.
- Nonprofit boards should hold responsibility for determining appropriate compensation. A one-size-fits-all government fiat is not the right approach.
- Nonprofit salaries aren’t a secret: The IRS requires that pay of top executives be reported on nonprofits’ 990s, which are public documents. Government already has the ability to review this information and chose organizations for contracts based on which ones provide the best level of service in relation to the costs of provision.
- As the regulations have been written, all pay packages in the top 25% will be flagged as potentially excessive and will force all of those nonprofits to request waivers – a huge amount of new paperwork for the sector and for state government to review. Also, nonprofits receiving funding from multiple agencies will have to submit waivers multiple times and be subject to multiple, possibly conflicting judgments.
- Unless waivers are consistently granted and those waived salaries are included in the subsequent arrays of salaries in subsequent surveys, the effect of the use of a 75<sup>th</sup> percentile standard will be to consistently compress downward all salaries over time.
- State agencies continue to have problems with timely action on contracts with

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**Arguments AGAINST:**

	<p>nonprofits, as the State Comptroller’s reports continue to document. State agencies do not have the staffing capacity to review the tidal wave of new reporting and documentation.</p> <ul style="list-style-type: none"><li>▪ If the State does not provide compensation studies to nonprofits but instead leaves it to individual organizations to commission compensation studies to determine if their pay packages are in compliance, this constitutes an additional unfunded requirement for nonprofits – adding on to the mountings costs of providing services that that the State does not reimburse.</li><li>▪ The Attorney General already has authority on this issue, and compensation is already reviewed on every contract with the state when the budget is set, and when the contract is audited. So Executive Order 38 only adds another layer of oversight instead of strengthening existing mechanisms.</li></ul>
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**Philanthropy New York’s Position:**

Philanthropy New York has not taken an official position on limiting nonprofit executive compensation. However, we are generally supportive of the positions taken by such organizations as the Nonprofit Coordinating Committee, the Human Services Council and Lawyers Alliance, all of which have voiced pointed concerns about the need for, and possible unintended consequences of, such regulations.

**Check out these additional information sources:**

[New York Nonprofit Press 2013 Update on Capping Compensation](#)

[Gov. Cuomo’s Executive Order Limiting Administrative Costs & Executive Compensation](#)

[New York Times article prompting Gov. Cuomo’s Executive Order](#)

[Lawyers Alliance for New York Comments on Executive Compensation Regulations](#)

[Human Services Council Comments on Executive Order 38](#)

[GuideStar Report: Salaries Drop for Nonprofit Leaders](#)



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