

February 6, 2012

Joint Testimony

New York State Senate Committee on Investigations and Government Operations
Hearing on Executive Compensation at Not-for-Profit Organizations

Submitted on behalf of the following organizations:

The Human Services Council of New York City
Lawyers Alliance for New York
Nonprofit Coordinating Committee of New York
UJA-Federation of New York
United Way of New York State

We appreciate the opportunity to submit written testimony to the Committee on behalf of our respective organizations. As you know there are thousands of nonprofits that have historically provided services to New Yorkers across a wide array of needs. This partnership of public and nonprofit services is a longstanding one, and highly successful.

Based on our extensive history and experience with nonprofit organizations in New York State, we offer our perspective and recommendations on this issue for your consideration:

1. Enforcement of existing state and federal oversight and reporting of nonprofit compensation is essential.

We note that all charitable organizations, whether they have contracts with New York State or not, face an almost unprecedented and recently increased level of regulation through required registration and annual reporting. These documents are already available for public and government review, including:

- Annual reports to the Office of the Attorney General (CHAR 500), which must include the agency's independent audit or financial review (depending on the amount of annual revenue). We note that the New York Attorney General is already charged in state law with the registration and reporting for all nonprofit organizations, however the reports to his office are currently submitted only as paper copies via regular mail.
- Applications to the federal government to become a tax exempt charity or "501(c)(3)," which requires extensive documentation and are acted on only after a lengthy and detailed review process.

- Annual reports to the IRS (Form 990), only recently revised and expanded, which are also lengthy and are *required* to include not only complete financial data, but also a description of programs, major revenue sources, a list of Board members, salary data for top staff, and a required description of how executive compensation is established – annually. These reports must be made available to the public upon request and many organizations post them on their web sites.
- The procurement review process in New York State, which involves a multi-layered process for issuing Requests for Proposals, reviewing contracts and approving payments for nonprofit agencies, including a review by the state agency, the Division of the Budget, the Office of the Attorney General and the Office of the State Comptroller. For a multi-year contract, there continues to be review each year of the organization’s budget and scope of work, by these state agencies.

These multiple state jurisdictions (state agencies, DOB, OAG and OSC) already have the authority to ask questions and call a halt to contracts in which the work is not being performed satisfactorily, the program objectives are not being met, or state funds are not being used for the purpose intended.

2. Electronic filing should be implemented to enable the Attorney General to identify agencies not in compliance with state law or regulation so that their actions can be investigated and remedial action, where appropriate, may be undertaken. The New York Attorney General is charged with the regulation of all nonprofit organizations, and any solution must involve that central role. Reports generated by the system would also be available to state agencies for their own compliance reviews and to the public to strengthen accountability with donors.

3. Electronic filing of all state RFP and contract documents and supporting documentation should also be implemented. Electronic filing would make it easier for the state to identify questionable contracts, investigate and take action where needed. In addition, the opportunity that electronic filing would have for increased transparency to the public, to the Legislature, as well as to state regulators, would only serve to increase public trust and benefit the entire system.

4. Additional education of the nonprofit sector, including staff and Board members, is always helpful. The Attorney General, as well as voluntary organizations and their federations, can play a more active role in continuing education for the nonprofit sector as to the federally required procedures for review and setting of executive compensation. The current best practices of a number of organizations can also be used as a basis for further outreach and education.

5. Efforts to make the public aware of the existing regulatory and reporting requirements and enforcement efforts is also recommended, as that, in itself, is a powerful educational and compliance-inducing tool. However, that publicity should take care to not taint the entire sector.

6. We recommend that the Attorney General interpret New York law in a manner consistent with the current federal “intermediate sanctions” standards for nonprofit executive compensation. This would include use of market-based analysis comparing like organizations, and following the voluntary “safe harbor” procedures set forth in the IRS regulations for setting compensation. These existing requirements should be recognized by the state to simplify and expand enforcement, and also to provide protection to nonprofits that follow them from challenge under New York law.

Before closing we would like to comment on the Governor’s proposals with respect to not for profit executive compensation. These were first proposed in budget language on January 17 and were the subject of an Executive Order for executive agencies on January 18. The state agencies are directed to develop regulations and take other actions to implement the order within 90 days.

We are troubled about how this issue has been handled and are concerned about its implementation. More specifically:

- A Task Force, chaired by Benjamin Lawsky, was appointed in the summer of 2011. Senator Marcellino is of course a member. Their initial action was to send nearly a thousand detailed questionnaires to not for profit agencies requesting compensation and benefit data. The public and the Legislature should be able to review the compilation of this data and an analysis of the findings, prior to proposals being put forth and discussed, and certainly before any action is taken.
- We are also concerned that there has been no process for the not for profit sector to be “at the table” to give its input into this issue. We note that other major issues dealt with in the past year have begun with the creation of a task force or committee to engage in study and dialogue. These committees included state representatives and members of the sectors which would be affected. This was followed by detailed study, public hearings, and dialogue, prior to reports with recommendations. Some examples of these include the Medicaid Redesign Task Force, the Mandate Relief Task Force and the SAGE Commission. These steps have not been taken with the Compensation Task Force prior to proposals in the budget and the Executive Order being made public.
- News stories in 2011 reported on nonprofit agencies that apparently used public dollars in an irresponsible and possibly illegal way. We do not support the actions of those agencies. Certainly, however, the state already has the legal tools to demand restitution, if that is the case, and the existing oversight authority, as outlined above, to prevent a re-occurrence. New restrictions or reporting for the entire sector have not yet been demonstrated as necessary and could further add to administrative costs that are themselves a target for savings.

- What has not been demonstrated is that the problem is widespread and persistent. In the meantime, the not for profit sector has been unfairly portrayed as “lining their pockets at taxpayer expense”, thus doing irreparable harm to the reputations and good work of thousands of these agencies and their staff. This will surely hurt the private fundraising of these agencies at the very time when demands for their help have increased and while state and federal governments are cutting programs.
- The state is already an outlier itself when it comes to processing contracts with not for profit agencies. The State Comptroller’s annual reports on prompt contracting show that the state has been late between 70%-90% of the time in approving these contracts between 2008 and 2010, and the record was no better before that. This, despite a law that has been on the books for over 20 years, passed by the State Legislature.
- State agencies already have different determinations for “administrative” or “overhead” expenses, as well as different allowable costs accepted as components.

To suggest that the state agencies take time to develop guidelines on compensation prior to this delay prone process being fixed, will needlessly add to the financial distress of the majority of not for profits who serve your constituents, as they spend time and money complying with new regulations and procedures.

We urge your committee and the legislature to proceed with caution in formulating new measures to deal with a problem that has been the subject of considerable reform over many decades, and for which there is extensive law and regulation already on the books. Excessive compensation paid to a few nonprofit executives, particularly when paid from limited state dollars, represents a waste of resources that could be devoted to program services and creates a stain on the nonprofit sector. However, we believe that an extensive set of tools in state and federal law and regulation already enables New York State to identify those cases and address them.

We are confident that your committee will give extremely thoughtful consideration to the issues raised here. To summarize, we urge the state to focus on: (1) enforcement of existing laws and regulations as to wrongdoers; (2) education of the public and nonprofits as to those laws and rules; and (3) confirmation that New York State will follow the comprehensive federal rules and procedures for determining whether compensation is excessive. The time and money that will be wasted by imposing a new system will not remotely, in our view, be offset by benefits to New York State finances, to those served by New York State nonprofits or to nonprofits themselves.

Again we appreciate the opportunity to submit this testimony and we are willing to meet to discuss these recommendations.

Michael Stoller, Executive Director

The Human Services Council of New York City (HSC) is a coalition of nearly 200 nonprofits strengthening the human services sector's ability to serve New Yorkers in need. As a non-partisan intermediary between government agencies and member organizations, we passionately champion the sector. We proactively negotiate with State and City government for mutually beneficial, solutions-based budget, policy, and legislative reform that improve our constituents' work and the lives of the individuals they serve.

Sean Delany, Executive Director

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Lawyers Alliance represents hundreds of small and community-based nonprofits that contract with New York State to provide vital services in low-income neighborhoods.

Michael Clark, President

Nonprofit Coordinating Committee of New York (NPCC), is an "umbrella" organization representing and serving nearly 1,500 member nonprofit 501(c)(3) organizations in the New York City area. Established in 1984, NPCC informs and connects nonprofit leaders, saves nonprofits money, and strengthens the nonprofit sector's relations with government.

Ronald Soloway, Managing Director, Government & External Relations

UJA-Federation of New York is a major Jewish philanthropy that provides funding support to a network of 100 health and human service agencies in New York City, Long Island and Westchester County. Our network of agencies assist the poor and vulnerable in both the Jewish and broader community.

Susan K. Hager, President

United Way of New York State is a statewide association which works to strengthen the capacity of local United Ways to be leaders in achieving results that improve the lives of all New Yorkers.