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NON-PROFIT SAFE HARBORS COMPLIANCE

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In 1996, responding to the United Way executive compensation scandal, the U.S. Congress passed the "Taxpayers' Rights Act." All U.S. based non-profits and internationals chartered in the U.S. are subject to this Act, which is referred to as the "Safe Harbors Act" or the "Intermediate Sanctions Act."

The Act requires that every year 501 (c) 3 institutions review the CEO's compensation and establish "safe harbors" for that remuneration. "Safe harbors" refers to ensuring that the compensation for the CEO of any non-profit falls within a normal range of compensation for similar positions in like institutions or for the market replacement cost for that position.

Littleford & Associates' database serves to establish and confirm the required safe harbors. National, international and regional associations cannot provide this completely because that data is gathered in survey form subject to varying interpretations and omissions by the respondents. Littleford & Associates' data is gathered from individual confidential interviews and pursues all aspects of the CEO's package including elements not reported to regional or national associations.

In addition, the Safe Harbors legislation made it possible for anyone in the US to obtain a 990 Form on a head or CEO's compensation. The availability of this information in the public domain heightens the need for due diligence in setting a nonprofit executive's salary or in the DESIGN of his or her total package. (The web site Guidestar is the most frequently accessed source of 990 Forms on 501(c) 3 organizations.) The present 990 Form contains the CEO's salary and benefit package but not all forms of compensation.

Because of the discrepancies and omissions inherent in the current 990, the IRS redesigned and tightened up the 990 Form considerably. Some changes to the Form were indeed necessary and represent important improvements, but these will involve much more due diligence on the part of filers and increased oversight by boards beginning with 2008 returns filed in 2009. (See "The Big Dig: Digging Your Way Through the New Form 990" below.)

In sum, the Intermediate Sanctions Act requires the following: an annual compensation comparison; a written record of decisions made; no conflict of interest between those making the compensation decision and the organization; documentation demonstrating that the compensation



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package falls within the "safe harbors" for that particular kind of non-profit. Littleford & Associates provides that safe harbors information including the Rebuttable Presumption of Reasonableness Checklist that the IRS requires by detailing where the proposed compensation package falls compared to similar organizations.

We would be happy to work with your organization to help you understand the "safe harbors" issues and prepare the written support you need to avoid any difficulties or challenges. Our clients on this topic range in size from very small ones just getting up to speed on the requirements of this legislation to complex sophisticated nonprofits.

We will also assist the organization in responding appropriately and quickly to a "constituent attack" by uninformed individuals who may use head/CEO compensation data available in the public domain to voice grievances.

Littleford & Associates, however, does not provide legal or accounting advice. We do not advise clients on how to complete or file the 990 forms. We recommend that our clients retain their own counsel on technical legal and accounting practices.

For additional information about this topic, please see [Section 4958 - "Intermediate Sanctions"](#)