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GUIDESTAR®  
CEO Compensation  
Checkpoint  
REPORT

Report for

ABC Food Bank, Inc.  
EIN: 12-3456789  
123 Giving Place  
Anytown, MA 12345



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## Complying with the IRS's Rebuttable Presumption

A legal perspective by Karl E. Emerson, attorney at law

Individuals working for a public charity that has been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code ("charity") are not required to donate their services and are allowed to be reasonably compensated. In other words, they are not required to work for free or to accept reduced compensation simply because they provide their services to a charity rather than to a taxable organization, although such individuals often do. The total compensation paid by a charity to these individuals must be fair and reasonable and not excessive, however.

In fact, the payment of unreasonable or excessive compensation can result in the revocation of a charity's tax-exempt status and/or the imposition of significant penalties under section 4958 of the Internal Revenue Code against the individuals who received the excessive compensation as well as against any board members who knowingly approved the excessive compensation. These section 4958 penalties are known as *intermediate sanctions*, and they can be significant and prohibitive. For example, if the IRS were to determine that an individual was paid \$100,000 more than similarly situated individuals performing similar functions at similar organizations and that there were no legitimate reasons for doing so, the individual would be required to make the charity whole by repaying the \$100,000 in excessive compensation, with interest, and pay a \$25,000 penalty to the IRS. If the individual did not repay the \$100,000 in excess compensation within the time frame required by the IRS, he or she would be required to pay an additional 200 percent penalty to the IRS. In addition, any charity managers, typically board members, who knowingly approved the excess compensation, would be required to pay a 10 percent penalty to the IRS as well.

Whether an individual's total compensation is fair and reasonable is determined on a case-by-case basis. The process for determining the reasonableness of compensation is similar to that used to value anything; this process requires a charity to gather comparability data regarding what similarly situated individuals running similar organizations are paid. There are numerous sources for obtaining this information. Your purchase of this customized compensation report from GuideStar is one of many ways in which you can obtain the required comparability data.

By purchasing this GuideStar comparability report, your charity has taken the first step toward compliance with the IRS's compensation rules. Be sure it takes the last two steps by ensuring that the total compensation package is approved in advance by your charity's board, that no board member with an actual or potential conflict of interest participates in the board's deliberations, and that your board adequately and contemporaneously documents the basis for its determination in its meeting minutes.

For an individual's compensation to be fair and reasonable there must be an approximately equal exchange of benefits between the charity and the individual, so that the individual does not receive an unreasonable or unwarranted benefit from the charity.

To help charities comply with this sometimes complex area of the law, the IRS has established a "rebuttable presumption" that payments to individuals working for a charity are presumed to be reasonable and not excessive if the following steps were taken:

- the charity's board obtained and relied on appropriate comparability data prior to making its determination;
- the total compensation package was approved in advance by the charity's board, and no individuals who had an actual or potential conflict of interest with respect to the compensation arrangement participated in the deliberations; and
- the charity's board adequately and contemporaneously documented the basis for its determination.

If the above three steps were taken, the IRS may only rebut the presumption of reasonableness if it can show that the comparability data relied on by the charity's board was inappropriate.

By purchasing this GuideStar comparability report, your charity has met the first of these three required steps—make sure it meets the last two as well by ensuring that the total compensation package is approved in advance by your charity's board, that no board member with an actual or potential conflict of interest participates in the board's deliberations, and that your board adequately and contemporaneously documents the basis for its determination in its meeting minutes. If your charity follows these three basic steps, it will be able to take advantage of the IRS's rebuttable presumption should the IRS ever question the reasonableness of any compensation your charity has paid.

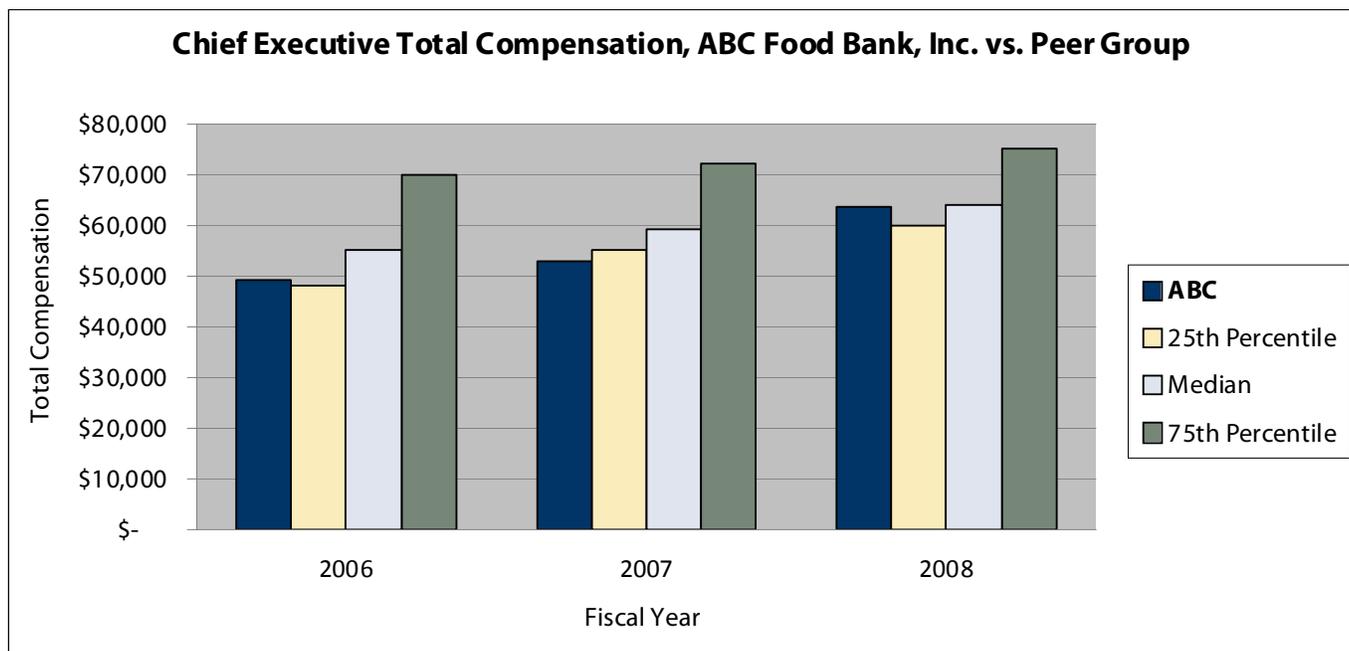
*Karl E. Emerson is an attorney with Montgomery, McCracken, Walker & Rhoads, LLP in Philadelphia and a nationally recognized speaker on nonprofit compliance issues. He is past director of the Pennsylvania Bureau of Charitable Organizations and served as the president and vice president of the National Association of State Charity Officials (NASCO).*

**ABC Food Bank, Inc.**  
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**Prepared on October 7, 2010**

The compensation of the chief executive of ABC Food Bank, Inc. for the years 2006–2008 was compared to that of chief executives at 13 organizations similar in revenue, mission, and programs.

The compensation of the chief executive of ABC Food Bank, Inc. was 91 percent of the median compensation for the peer group in FY2006, 89 percent of the median compensation in FY2007, and 99 percent of the median compensation in FY2008.



The median level of compensation is the amount at which half of the chief executives received more than that amount and half received less than that amount. Organizations should take into account such factors as geographic cost of living data, experience, and education when determining the proper compensation for a given individual.

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The following report is based on an analysis of chief executive compensation at 13 organizations similar in size, mission, and programs to ABC Food Bank, Inc.

**Peer Comparison Group for ABC Food Bank, Inc.**

<b>Organization</b>	<b>City</b>	<b>State</b>
United Way Community Food Bank	Birmingham	AL
Association of Arizona Food Banks, Inc.	Phoenix	AZ
Mamas Kitchen	San Diego	CA
Food Bank of Yolo County	Woodland	CA
Seed Sowers Evangelistic Association, Inc.	Lakeland	FL
Americas Second Harvest Of Coastal Georgia, Inc.	Savannah	GA
Manna Food Center, Inc.	Rockville	MD
Second Harvest North Central Food Bank, Inc.	Grand Rapids	MN
Hunger Coalition, Inc.	Boone	NC
Memphis Food Bank	Memphis	TN
Food Bank of Abilene, Inc.	Abilene	TX
Thurston County Food Bank	Olympia	WA
Blue Mountain Action Council, Inc.	Walla Walla	WA

## Organization Revenue

The chart below shows statistics about the revenue of the organizations in the peer comparison group in relation to ABC Food Bank, Inc.

Total Revenues for ABC Food Bank, Inc. and Peer Group, 2006-2008							
Fiscal Year	ABC Food Bank, Inc.	Mean	Minimum	Maximum	25th Percentile	Median	75th Percentile
2006	\$ 2,351,935	\$ 2,975,036	\$ 2,182,940	\$ 4,574,648	\$ 2,369,235	\$ 2,783,556	\$ 3,228,396
2007	\$ 3,016,049	\$ 3,209,635	\$ 2,125,567	\$ 4,818,043	\$ 2,596,960	\$ 3,077,914	\$ 3,707,660
2008	\$ 3,252,306	\$ 3,277,076	\$ 2,091,488	\$ 4,742,010	\$ 2,753,492	\$ 3,186,018	\$ 3,854,611

## Chief Executive Total Compensation

The chart below shows statistics about the chief executive total compensation of the organizations in the peer comparison group in relation to ABC Food Bank, Inc.

Chief Executive Total Compensation for ABC Food Bank, Inc. and Peer Group, 2006-2008							
Fiscal Year	ABC Food Bank, Inc.	Mean	Minimum	Maximum	25th Percentile	Median	75th Percentile
2006	\$ 49,325	\$ 59,581	\$ 26,680	\$ 119,532	\$ 47,943	\$ 54,062	\$ 69,608
2007	\$ 52,785	\$ 67,038	\$ 37,275	\$ 125,768	\$ 55,271	\$ 59,280	\$ 71,271
2008	\$ 63,576	\$ 71,319	\$ 43,266	\$ 131,609	\$ 61,430	\$ 64,507	\$ 74,085

2008 Form 990 data was used in the total compensation peer analysis. The 2008 Form 990 introduced changes to the reporting structure for compensation. To learn more, click [here](#).

## Percent Change in Incumbent Chief Executive Total Compensation

The chart below shows statistics about the percent change in chief executive total compensation of the organizations in the peer comparison group in relation to ABC Food Bank, Inc.

Percent Change in Incumbent Chief Executive Total Compensation for ABC Food Bank, Inc. and Peer Group, 2006-2008							
Fiscal Year	ABC Food Bank, Inc.	Mean	Minimum	Maximum	25th Percentile	Median	75th Percentile
2006-2007	7.0%	10.5%	0.9%	28.2%	6.3%	8.9%	15.5%
2007-2008	20.4%	7.1%	7.5%	21.2%	2.6%	4.8%	11.6%

## How to Use This Information

The data above are indicative of the range of compensation of chief executives at organizations similar to ABC Food Bank, Inc. No organization, however, is exactly like yours, nor are the chief executives exactly like one another. In determining the proper compensation for your chief executive, here are some of the factors to consider:

- The relevant educational experience of the individual.
- The amount of experience at this or similar positions.
- The quality of the work performance of the individual, if currently employed by the organization.
- The relative cost of living in the area where the individual will live and work.
- Competitive market demand for the type of individual desired.



## GuideStar Methodology for Determining a Peer Group

The initial peer list from which you selected your finalized peer group is drawn exclusively from information generated by the IRS or provided to the IRS by these organizations. The analysis is based on the three most recent fiscal years for which data is available (currently 2006 through 2009). The initial list of peers is based on two factors: revenue, as reported on Form 990, and NTEE code, as assigned to organizations by the IRS. Organizations must have data available for three years in order to be included in the initial peer list.

### Revenue

Organizations are assigned to one of the following revenue groupings:

- \$100,000–\$500,000
- \$500,001–\$1,000,000
- \$1,000,001–\$5,000,000
- \$5,000,001–\$10,000,000
- \$10,000,001–\$25,000,000
- \$25,000,001–\$50,000,000
- \$50,000,001–\$100,000,000
- \$100,000,001–\$500,000,000
- Greater than \$500,000,000

In addition to considering all organizations in the revenue grouping for possible inclusion in the peer group, all organizations within a  $\pm 25$  percent range of your organization's revenue are also considered. So, for example, if your organization's FY07 revenue was \$5,250,000, all organizations in the \$5,000,001–\$10,000,000 group would be considered as well as organizations with revenues down to \$3,937,500 (\$5,250,000 minus 25 percent).

### NTEE Code

The NTEE (National Taxonomy of Exempt Entities) classification system, developed by the National Center for Charitable Statistics at the Urban Institute, is used by the IRS to classify organizations into broad categories. The system is a three-tier hierarchal system. For example, at the top level, an organization might be classified as an arts, humanities, or culture organization. Moving down to the second level, one finds categories such as visual arts, performing arts, museums, etc. Finally, at the tertiary level, the museum category is divided into art museums, history museums, and so on. The IRS coding is at this tertiary level. More information about the NTEE classification system may be found at <http://nccs.urban.org/classification/NTEE.cfm>.

## Mission

GuideStar is the registered trademark and operating name of GuideStar USA, Inc., a 501(c)(3) nonprofit organization. Our mission is to revolutionize philanthropy and nonprofit practice by providing information that advances transparency, enables users to make better decisions, and encourages charitable giving.

## GuideStar CEO Compensation Checkpoint

To obtain a GuideStar CEO Compensation Checkpoint report for another organization, please visit <http://www.guidestar.org/ceocomp>.