

Executive Order 38 Compensation Acceptable Compensation Surveys

Background

This is to provide guidance on acceptable compensation surveys that can be used by covered providers to assess compliance with the “75% rule.”

The regulations for 13 agencies, which are identical for this purpose, state in part that compliance with executive compensation limits requires assurance that the executive compensation is not (emphasis added):

*“...greater than the 75th percentile of that compensation provided to comparable executives in other providers of the same size and within the same program service sector and the same or comparable geographic area **as established by a compensation survey identified, provided, or recognized by the Department and the Director of the Division of the Budget; or**”*

Acceptable Compensation Surveys

To assist in the process of identifying, providing, or recognizing compensation surveys, the Division of the Budget issued an RFI on April 4, 2014 to solicit information from interested parties concerning the provisions of compensation survey services.

Based on the review of the RFI responses and input from impacted entities, we believe it is in the best interest of impacted providers to provide them maximum flexibility to utilize compensation surveys that they deem appropriate to meet the requirements of the regulations, as noted below.

The impacted agencies and the Division of the Budget will recognize any compensation survey that complies with the following three principles:

1. Is consistent with all relevant Internal Revenue Service requirements, including actions needed to avoid Intermediate Sanctions;
2. Is consistent with the guidelines contained in the Preliminary Guidance Document available on the EO 38 Website (relevant section attached); and
3.
 - a. Utilizes recognized and publicly available databases that are updated regularly, such as:
 - Guide Star - <http://www.guidestar.org/>
 - ERI's (Economic Research Institute) Non Profit Survey - <http://www.erieri.com/>

OR
 - b. Utilizes applicable provider organization surveys that are comprehensive, regularly updated and provide sufficient program/location information such as:
 - Non Profit Coordinating Committee of New York Salary Survey Results (Form 990) - <http://www.npccny.org/>

OR
 - c. Is conducted on behalf of the covered provider by other entities that have the capacity and regularly provide such salary surveys, including CPA or consulting firms.