

Michigan Society of Association Executives

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MICHIGAN SOCIETY OF ASSOCIATION EXECUTIVES



**Meaning:
The Key to
Successful
Organizations**

Measuring Up: *The New and Improved MSAE Compensation and Benefits Survey*

by Ed Ura

During the next month, your organization will once again be invited to participate in the MSAE Compensation and Benefits Survey, conducted by Management Resource Center, Inc. of Plymouth, MI. This long running survey is the most comprehensive and

respected source of information on association industry pay in the state of Michigan. Hundreds of organizations have participated over the years, and many of them rely on this study as documentation for decisions made not just for the top executive, but for all of the organization's employees.

Participation in this survey is important,

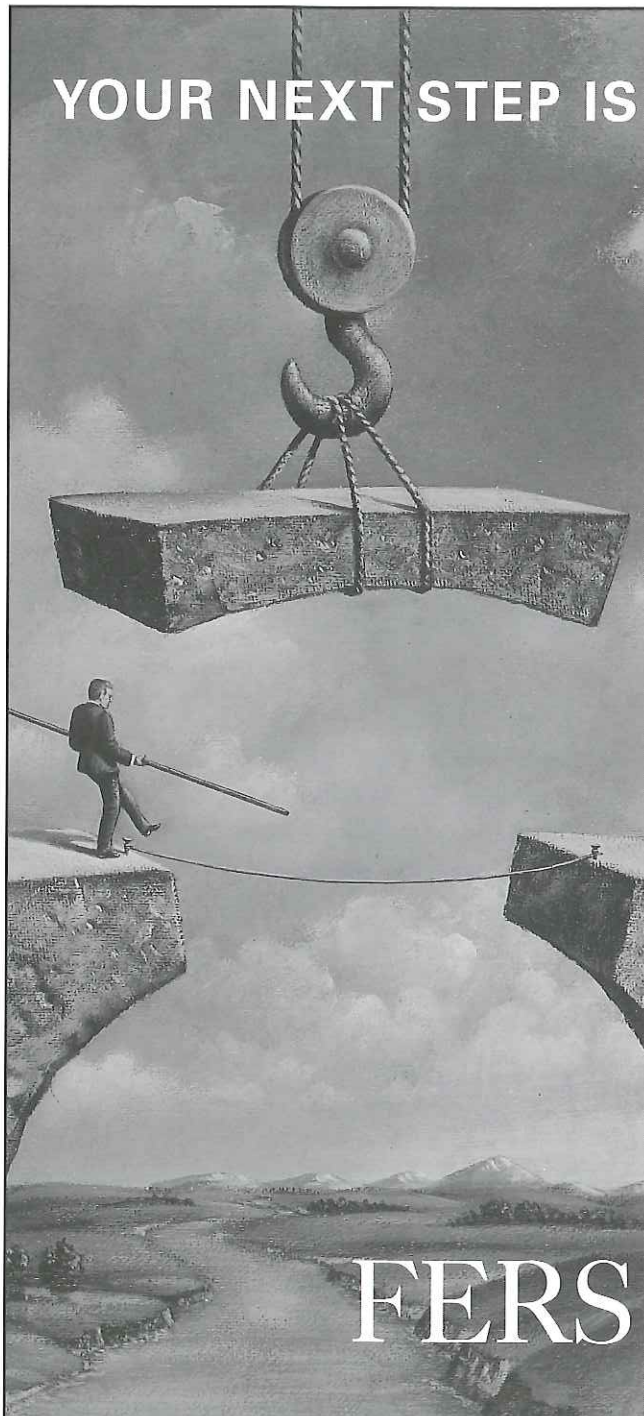
as it provides you with the information you need to react to labor market conditions, and to ensure that your organization is in compliance with the myriad of regulations and legislation that affects non-profits. Participation is also important as part of your membership in MSAE. Even if your organization does not use the results, your fellow members will.

The Labor Market and the Economy – What They Mean ...

In a nation where the existence of a recession (or for that matter economic growth) is determined by arcane statistics developed and maintained by academics and economic technicians, it is often difficult to reconcile published reports and pronouncements with practical day-to-day experiences. For example, those who believe that the current (until March at least!) "recession" has driven down pay might be surprised to find that rates of pay in the labor market have actually increased more in the last year than in prior years.

Why should associations pay more attention to the real labor market than gloom and doom economic reports? There are several reasons. First, while unemployment has increased, it is still relatively low by long-term standards, and what is more important, it probably has not affected the market for the individual skill sets your organization needs. Skilled employees still have little difficulty finding employment, and typically at a higher rate of pay. Second, the increasing "professionalization" of the association world, particularly in management, has called for increased skills, and more competition with the general labor market. As associations expand their searches beyond the non-profit world, they encounter the compensation and benefit structure of the private sector, which typically are at higher levels.

The most important reason why an association should look carefully at the market is because it points out the particular areas that need attention, as well as the general trends that effect compensation and benefits. For several years the association industry has had one of the higher rates of pay increases – primarily because competitive increases starting from relatively low base rates provide a larger percentage increase. Applying general media "predictions" or budget pro-



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jections to below-market pay levels would yield pay increases that are noncompetitive.

The IRS and You

In relatively recent times, the IRS has begun to vigorously enforce both existing rules and extensive new regulations issued in January 2001 pertaining to executive compensation in "qualifying organizations" (IRC section 501(c)(3) and 501(c)(4) entities). Under these regulations (primarily IRC section 4958), there is an excise tax imposed on individuals considered to be "disqualified persons" (anyone in a position to exercise substantial influence over a qualifying organization's affairs) who receive excess benefits.

"Excess benefits" are payments that exceed the value of the benefit the organization receives from the individual, including the value of services performed. While there are many factors that come into play, the most well understood is the comparison to the market. That is, the IRS considers compensation (salary and bonus) and benefits that are out of line with those of comparable executives performing comparable work at

similar organizations to be "excess" and thus subject to liability. The most onerous aspect of this regulation is a five-year "look-back" that essentially means the IRS can go back and examine the prior five years worth of compensation to determine whether there has ever been excess compensation.

While the organization itself is typically not penalized for "excess compensation," the liability to the executive can be significant. Section 4958 provides for a "first-tier" tax of 25% to be imposed on the excess amount; an additional 10% can be imposed if the executive is considered an "organization manager" who had approved the payments intentionally and willfully (e.g., a "self-dealing" situation). A "second-tier" tax of 200% can be imposed if the executive does not return the excess benefit, plus interest. Thankfully, these taxes can be abated if the executive returns the excess payment, particularly if there was reasonable cause for

the payments.

There are several exceptions and conditions under which this Code section will not be imposed. For example, the Seventh Circuit has held that an initial contract between the organization and a new executive (an "unrelated party") is presumed to be the re-

sult of arms-length negotiation and therefore "reasonable." However, it appears that subsequent contracts,

even those for the same amount, would not continue to be exempt from the provisions of the Code.

As has generally been true with "reasonable compensation" regardless of industry or IRS status, the best way to make a case for compensation and benefits is to have clearly documented decisions based on reliable data. In the case of an association, a decision made by the Board of Directors, or better yet, a "compensation committee"

continued on page 21

Participation is an important part of membership in MSAE

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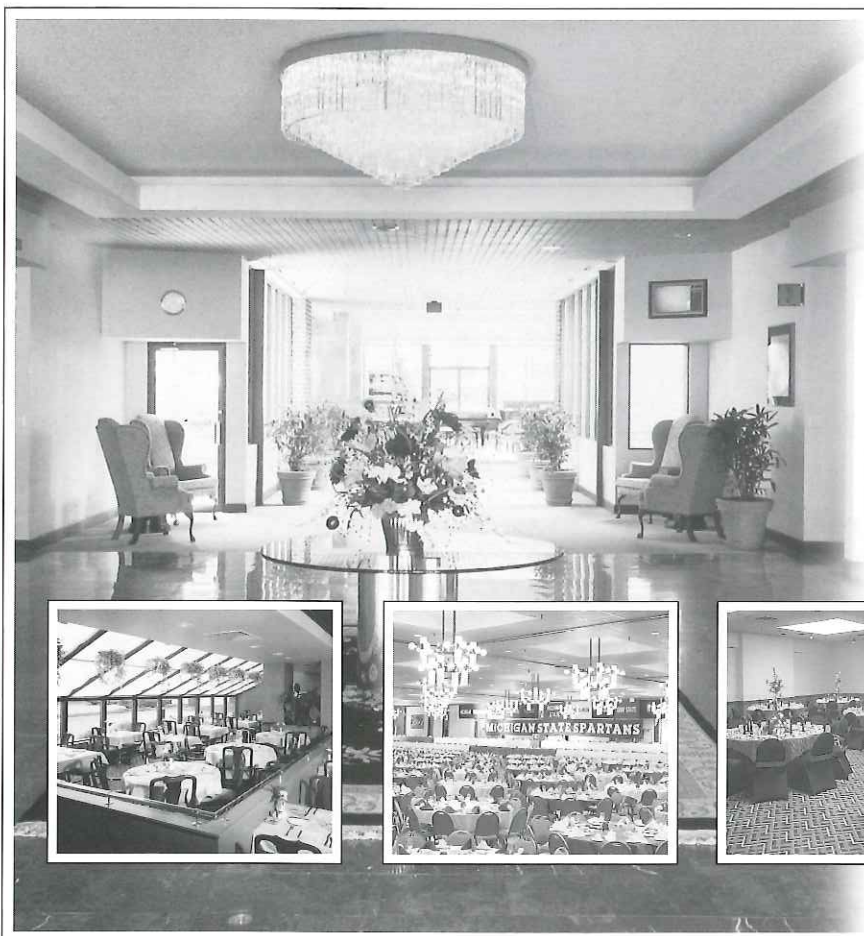
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made up of non-employee or non-related directors, would be a factor supporting "reasonableness." Reliance on appropriate and comparable data, such as the results of the MSAE survey, and documentation of factors such as the executives' performance and achievements, also is essential to building a strong case.

New Features

Several changes have been made to enhance the usefulness of the MSAE survey to participants. In order to help the larger associations, a special "blue chip" report will be prepared, focusing on associations with budgets of more than \$3 million per year; this data will be included in the general report, of course, but the special report will allow the larger associations to focus more clearly on their unique market. Several jobs have been deleted, added or changed to better reflect the nature of the association world. Prominent among these is the addition of a "For-Profit Subsidiary President," for those organizations which have a service corporation or other affiliated for-profit entity. MSAE members from particular fields of interest are

being polled to determine whether additional jobs can be added to help their own particular needs.

The benefits section of the questionnaire has been reformatted and streamlined as well. Participants will not be asked separate questions on the top executive vs. other employees; the focus instead will be on the general programs, and exceptions for the top executive will be noted in the margins. Of course, we will continue to look at the supplemental benefits and perquisites provided to executive staff.

Your participation is encouraged and your comments are welcome. Survey results will be available in May. **AN**

Edmund B. Ura, JD is a founder and Executive Director of Management Resource Center, Inc. (MRC). He is a speaker and trainer on topics addressing constructive use of management consultants and on a wide variety of compensation related topics. For further information Ed can be contacted at ebura@mrc-consulting.com or (734) 454-2500.

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