# SPECIAL REPORT

# Assets on Loan

*Nonprofit groups lend millions to officials, Chronicle study finds*

**By Harvy Lipman and Grant Williams**

WHEN CATHOLIC HEALTHCARE WEST recruited Lloyd H. Dean to be its chief executive four years ago, it made him an offer most nonprofit leaders could only envy.

Besides paying him one of the highest annual salaries in the charity world—$1.2-million in 2001—Catholic Healthcare West gave Mr. Dean a $2-million interest-free housing loan, due in five years, that helped him acquire a penthouse condominium overlooking San Francisco Bay.

Located in one of the city's poshest skyscrapers, the condominium came with marble floors, Italian-granite countertops, and designer furnishings, according to a brochure on the building. The loan itself came with something far richer: an agreement to forgive all but $250,000 of Mr. Dean's debt if he stayed in his job for five years.

Mr. Dean's mortgage deal is among the sweetest that *The Chronicle* found in a six-month investigation of thousands of loans made by nonprofit groups to charity officers and directors. The transactions include at least 140 interest-free loans like Mr. Dean's, personal loans for investments in stock and real estate, and loans to wealthy donors who borrowed back money they had contributed to nonprofit groups they started.

TODD FRANKEL

**Lloyd H. Dean received a $2-million interest-free loan from Catholic Healthcare West that helped him buy a penthouse condominium that overlooks San Francisco Bay.**

### $142-Million in Debts

*The Chronicle* reviewed data on 10,700 Forms 990 informational tax returns filed by groups that had an annual revenue of $25,000 or more and indicated that they had outstanding debt with officers or directors. Because many charities fill out their returns incorrectly or incompletely, it is impossible to know how much money charities have lent to nonprofit officials in recent years. Some organizations, for example, acknowledged making loans but failed to describe the loans' sizes, terms, or recipients.

But simply among the 1,002 charities that clearly acknowledged that they had outstanding debt from 1998 through 2001 (the latest year for which data were available) as the result of loans made to officers and directors, loan debts totaled $142-million, *The Chronicle* found.

Federal law bars private foundations from making loans to their officers and directors, but it does not prevent charities from making such deals. The number of organizations that acknowledged making loans is only a small fraction of the 264,000 charitable groups large enough to file Form 990 federal tax returns.

Still, the practice is prevalent enough that two of the most influential voices in the charity world—one a powerful U.S. senator who chairs a committee that investigates charities, the other the head of the nation's largest coalition of nonprofit institutions—reacted sharply to the implications of *The Chronicle*'s findings.

"Families giving to charities want to support good work, not penthouse apartments for executives," Sen. Charles Grassley, an Iowa Republican who is chairman of the Senate Finance Committee, said in a statement. Mr. Grassley's committee has been investigating the financial dealings of a number of nonprofit groups for more than two years.

After reviewing the *Chronicle*'s findings, Mr. Grassley said that Congress should apply to charities some of the principles of the recently enacted Sarbanes-Oxley Act, which outlaws loans to officers and directors by for-profit companies and otherwise requires them to improve their governance and accountability.

Diana Aviv, president of Independent Sector, the nation's largest coalition of charities and foundations, denounced the practice of using nonprofit assets for loans, whether they are used to recruit executives or for any other reason. "We're not in the money-lending business," Ms. Aviv said in an interview. "That's not our mission."

### State Laws

Last fall, Independent Sector and BoardSource, a Washington group that seeks to improve the effectiveness of nonprofit board members, jointly called on charities to adopt some of the provisions of the

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**Borrowing the Future**

# Charities Bestow No-Interest Loans on Their Well-Paid Executives

**By Harvy Lipman and Grant Williams**

FOR THE PAST 15 years, John Rowe has owned a duplex penthouse apartment that offers a view of Manhattan from its perch 29 stories above Central Park.

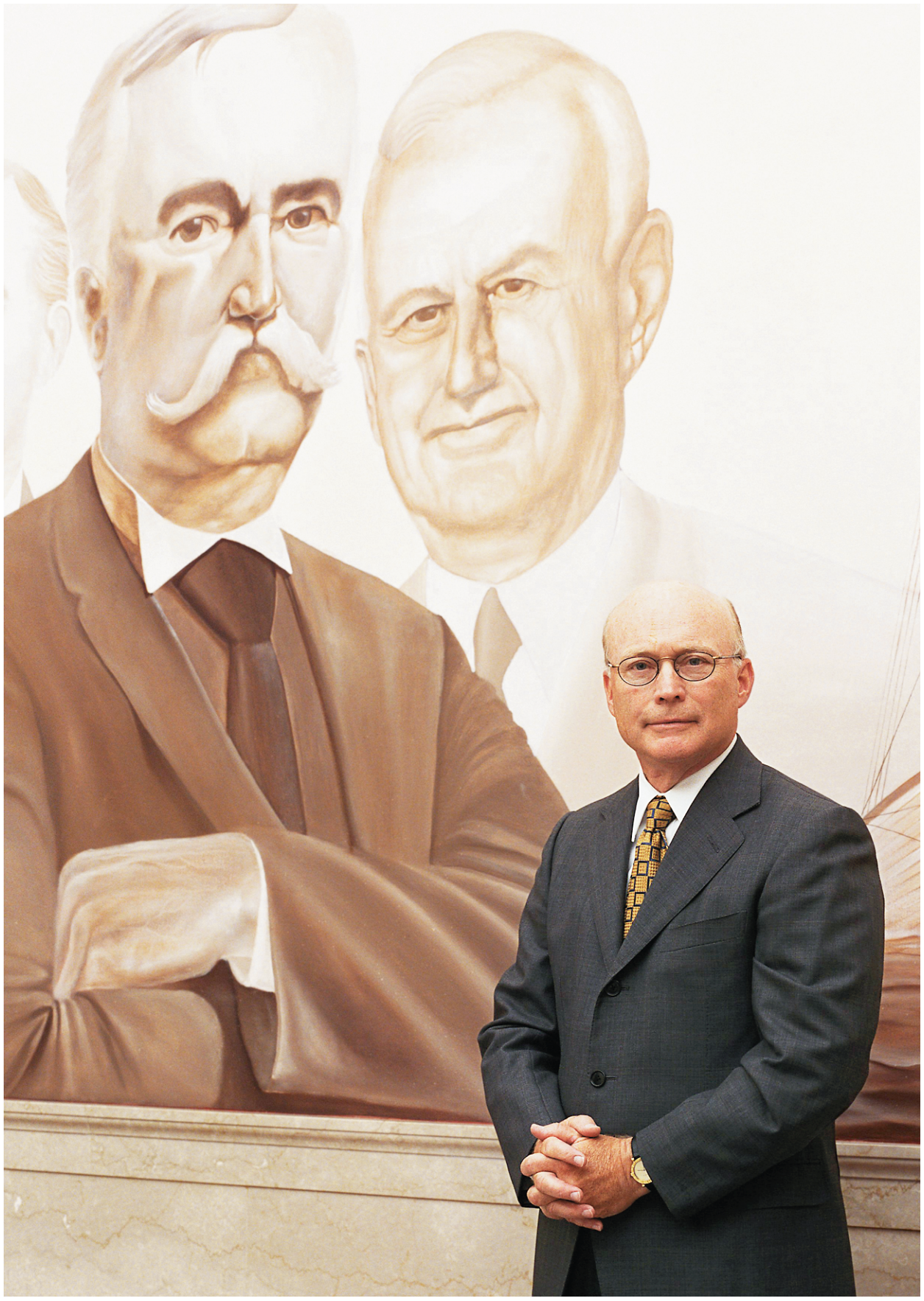
Dr. Rowe bought the apartment in 1989 using a $2.25-million, interest-free loan from the nonprofit Mount Sinai Hospital and School of Medicine, which made the deal as part of an effort to recruit him as president. Dr. Rowe repaid the loan after he left Mount Sinai in 2000 to become CEO of the Aetna insurance company, but he still owns the apartment. That means he can pocket any profit should he ever sell it. Late in 2002 one of his neighbors, the actress Tatum O'Neal, offered her apartment, 13 floors below Dr. Rowe's, for $4.5-million.

Not only does Dr. Rowe stand to make several million dollars should he ever sell the apartment, but—thanks to inflation—he actually ended up paying Mount Sinai back less money than he borrowed. When he repaid the loan in 2001, the $2.25-million he borrowed in 1989 was worth $3.12-million in 2001 dollars. By not charging him interest, Mount Sinai lost $870,000 on the loan.

In most cases, federal tax law would require Dr. Rowe to pay taxes on the amount of money the IRS calculated he should have paid in interest. But because Dr. Rowe, who moved to New York from the Boston area, used the loan to buy a home when relocating from one part of the country to another, he was exempt from paying those taxes.

As for Mount Sinai, which has struggled financially for the past five years, had it put the $2.25-million into a stock fund indexed to the Standard & Poor's 500 when it lent the money to Dr. Rowe, it would have earned about $9-million in profit by the time he left.

Mount Sinai's deal with Dr. Rowe typifies a broader practice in the nonprofit world: using charitable assets to offer mortgage loans to recruit high-level executives. In an analysis of Form 990 informational tax returns filed by 10,700 nonprofit groups from 1998 through 2001, *The Chronicle* found that at least 140 groups had interest-free loans outstanding to officers or directors. The groups include the Solomon R. Guggenheim Foundation, in New York; the National Geographic Society, in Washington; the Dana-Farber Cancer Institute, in Boston; and the San Francisco Museum of Modern Art. Also among the groups is Catholic Healthcare West, in San Francisco. (See article on facing page.)



JOANNE CHAN/REDUX-CA

**John Rowe, now CEO of the Aetna insurance company, received a $2.25-million no-interest loan from Mt. Sinai Hospital that he used to buy a duplex apartment overlooking Manhattan.**

### Recruiting Leaders

Dana-Farber gave its president, Edward J. Benz Jr., a $600,000 interest-free mortgage in 2000, along with annual compensation of $547,899. By 2002, Dr. Benz's compensation had reached $735,268.

Dr. Benz referred questions about the mortgage to Bill Schaller, a Dana-Farber spokesman, who said the organization provides interest-free loans "on a very limited basis from time to time. Typically it's used as a recruitment and retention tool, in order to get some top senior faculty." To take the Dana-Farber job in Boston, Dr. Benz left the Johns Hopkins University School of Medicine in Baltimore, a community with a lower cost of living.

Indeed, advocates of interest-free loans say such perquisites are necessary to compete with for-profit companies for executive talent capable of running complex organizations.

"You are trying to compete in the marketplace to get the best person you can," said B. Francis Saul II, a prominent Washington-area mortgage banker and real-estate developer who sits on the board of the National Geographic Society. "This is just a straightforward business thing. You make the best judgment that you can to get the best person you possibly can."

In October 2001, the society gave John Q. Griffin, the chief operating officer at Hearst Magazines International, an $800,000 interest-free mortgage, in addition to a $289,163 annual compensation package, when he left Hearst to become president of the society's magazine group. National Geographic agreed to forgive $50,000 of the loan annually for five years as long as Mr. Griffin remains on the job. The mortgage note says the loan must be repaid in full by the end of those five years.

Betty Hudson, a spokeswoman for the society, said that at first the organization did not include such a housing loan in the package it offered prospective applicants for the job, but no qualified publishing executives would even consider the position unless the group helped defray the cost of buying a home in the Washington area, which is more expensive than most of the rest of the nation. Mr. Griffin formerly lived in Allentown, Pa., where housing generally is far cheaper than in Washington.

The San Francisco Museum of Modern Art gave its new chief executive, Neal Benezra, a 10-year, no-interest mortgage of $801,900 in 2002 when he moved from Chicago, where he was a deputy di-

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# Government Regulators Say They Lack Funds to Monitor Charity Loans

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Sarbanes-Oxley Act—including its ban on loans to officers and directors.

Curbing loans by nonprofit groups has long been a priority of state regulators—at least on paper—but *The Chronicle* found little evidence of enforcement. Nineteen states and the District of Columbia prohibit or limit nonprofit groups from making loans to officers or directors, yet 221 organizations in those jurisdictions reported loan debts to such officials totaling $10,000 or more.

Among *The Chronicle*'s other findings:

- In the IRS filings, 2,278 nonprofit groups said they were owed at least $10,000 by top executives, other officers, or directors at some point from 1998 through 2001.
- Tax returns filed by another 4,756 groups reported loans to top officials, but failed, as required by the Internal Revenue Service, to say how much the debt totaled.
- More than half of the 2,278 organizations that claimed debts of at least $10,000 failed to stipulate on their tax returns, as required, whether the debts were loans, how much was lent, who received the money, and what the loans' terms were. Nearly one-third of the 1,002 groups that did provide documentation omitted at least one key piece of information.
- At least two dozen donors created foundation-like entities called supporting organizations with tax-deductible contributions and then borrowed back more than $6.7-million, often investing the money for their personal gain. In at least 12 instances, the loans these donors took accounted for 70 percent or more of the organization's assets.

### Objections Raised

Nonprofit officials, government regulators, and legal scholars raise numerous objections to the practice of lending charitable assets to officers and others.

"There's the question of how that money could have been better spent on programs," Ms. Aviv said. In addition, she said, a loan could put a nonprofit organization's assets at risk of being lost should the borrower be unable or unwilling to repay. "Most nonprofits don't have the ability to do the kinds of checks that a bank can do," Ms. Aviv said.

A loan may also make it difficult for a board to fire an executive who is not performing well on the job but who owes the charity a considerable sum, she said. A board might be forced to write off the loan as uncollectible, delay removing the executive until it gets the charity's money back, or sue the borrower, she said. The last option can be especially troublesome, she added, because the cost of a lawsuit could exceed the amount of money owed.

Besides creating the potential for monetary losses, loans also can further sully the image of the nonprofit world at a time when financial scandals already have diminished public confidence in charities, scholars and legal experts said. "If the public sees that their donated dollars are being used in a profligate and inappropriate and self-dealing way, they are going to get angry," said Peter Dobkin Hall, who teaches nonprofit management at Harvard University's John F. Kennedy School of Government.

### Mortgage Help

Loans to help high-level executives purchase homes represent the most common form of credit extended by nonprofit groups, *The Chronicle* found. Among the 1,262 loans whose purpose the newspaper could discern from charities' tax returns, two-thirds, or 846 loans, were for mortgages.

Some nonprofit scholars say that housing loans are defensible when they include a reasonable interest rate and are made available generally to new employees recruited to an organization from another part of the country. Yale University, for example, offers its faculty members loans to buy houses in New Haven, Conn., where the university is located. Mr. Hall, of Harvard, said he purchased his first house under that program when he taught at Yale. The program not only helped employees afford to buy their homes, he said, but also gave economically depressed New Haven a financial lift. Many other colleges offer similar loans.

Nonprofit groups that operate in high-cost cities frequently justify giving loans to officers by noting that they would otherwise not be able to afford housing comparable to what they previously owned. California real-estate prices that are out of reach of many nonprofit executives were a key reason that officials at Catholic Healthcare say they offered the loan to Mr. Dean. Mark Klein, vice president of corporate communications at Catholic Healthcare West, noted that "Catholic Healthcare West needed a CEO in 2000 when San Francisco housing prices were the highest in the country." The loan, he added, "enabled Mr. Dean to purchase a house in the San Francisco Bay Area roughly equivalent to the home he had in Illinois."

Before taking the job at Catholic Healthcare West, Mr. Dean was executive vice president of Advocate Health Care, a nonprofit organization that runs hospitals and various other health care services in and around Chicago. His salary in 2000, the last year he held that job, was $594,866.

Mr. Dean declined to speak with *The Chronicle,* instead referring all questions to Mr. Klein.

Mr. Klein said that Mr. Dean has engineered a financial turnaround at Catholic Healthcare West that he said more than makes up for the cost of the loan. "When he arrived, the organization was losing about $300-million a year," Mr. Klein said. For the 2003 fiscal year, he added, "Catholic Healthcare West ended up with a surplus for the first time in six years."

Ms. Aviv, of Independent Sector, however, questioned whether using loans and other generous perks as recruitment tools is necessary, no matter what the situation.

"I'm hard-pressed to believe that there are only two or three executives for any given position, and the only circumstances under which one can attract them is with lavish benefits," she said. Noting that only a fraction of nonprofit groups make loans to executives, she added, "How come the other 99.5 percent of organizations are able to attract very-well-qualified candidates without making similar kinds of offers?"

### Personal Purposes

Home-mortgage loans aren't the only kind of credit extended to high-level nonprofit executives. In its examination of Forms 990s, *The Chronicle* found that other types of personal loans to officers and directors accounted for nearly one-fifth, or 226, of the 1,262 loans whose purpose was clearly explained on the tax returns.

> **"If the public sees that their donated dollars are being used in a profligate and inappropriate and self-dealing way, they are going to get angry."**

For example, a charity in Crossville, Tenn., that helps preschool children with disabilities, lent its executive director $140,000, which he used to start his own restaurant. The official said he thought he was helping the charity because he promised to repay the money at a higher rate of interest than the organization could earn elsewhere. But the arrangement backfired when the local United Fund, a charity similar to the United Way that collects gifts through on-the-job campaigns, and the county government, upset at the loan, stopped supporting the charity. (See article on Page 11.)

A religious organization in Irvine, Calif., called Generation of Demonstration, or G.O.D., made a $50,598 loan to its founder, Ruckins McKinley, who is also the charity's chief executive officer and sole employee. The loan was intended to help compensate him for his work, according to the Rev. Gwen Rollins, a consultant to the group and its spokeswoman.

Mr. McKinley later repaid the money and will never again borrow from the charity, said Ms. Rollins, who became the group's adviser after the loan had been made.

"I instruct all my clients that making loans to officers, or to people that are closely associated with the organization, is not acceptable," she said, because it raises questions about whether nonprofit organizations provide insiders with improper benefits. "I can tell you that when these small organizations do make loans, they do it out of ignorance, not malice."

### Giving and Borrowing

Perhaps the most controversial types of loans are those that go to the very donors who start a nonprofit group.

In such cases, wealthy people start and finance foundation-like entities called supporting organizations, deduct the amount of their donations from their federal income-tax returns, and then borrow much of the money for their personal use.

The supporting organizations receive interest payments on the loans, which they use to pay for grants to other charitable groups, while the donor may invest the loan principal in business enterprises or use it for other personal reasons. The donor gets to keep any profits from those enterprises, even though they are financed with tax-exempt money.

That is a route taken by Walter R. Muralt and his father, Gary D. Muralt, owners of a lucrative truck stop in Missoula, Mont. The Muralts set up a charity in 1998 to support a children's shelter in Missoula. Over the next five years, they donated $1.4-million to the charity, taking what their lawyer described as "appropriate tax deductions" for the donations. During the same period, they and businesses they control borrowed back $758,000 for their personal use. (See article on Page 12.)

### Few Explicit Rules

Legal experts say federal law contains no prohibition on loans to officers and directors of charities. Under federal law, and in most states, the term "officers" includes not only people holding titles such as president and vice president, but also those with authority to make key decisions at organizations who hold no special title.

The law prohibits top officials of a nonprofit group from using their relationship with the organization to obtain money or perquisites that benefit them privately but do not help the charity accomplish its mission. A loan could violate that prohibition if its terms are unusually generous—particularly if it carries a below-market interest rate. Federal law, however, allows charities to offer loans and other perquisites when recruiting executives.

Loans to officers—especially for housing—are usually considered part of their compensation package, legal experts said, and nonprofit organizations need only show the federal government that the total amount of compensation is "reasonable," said Marc Owens, a Washington lawyer who was previously head of the Internal Revenue Service division that oversees tax-exempt organizations. One

## States Where Loans to Officials Are Banned or Limited

**The following states have enacted laws prohibiting or limiting nonprofit corporations from making loans to officers and directors.**

| | Number of organizations that made loans to officers or directors from 1998-2001 |
|---|---|
| Alabama | 10 |
| Alaska | 3 |
| Arkansas | 6 |
| Colorado | 10 |
| District of Columbia | 30 |
| Florida | 36 |
| Hawaii[1] | — |
| Idaho[2] | 3 |
| Illinois[3] | 33 |
| Indiana | 10 |
| Iowa | 10 |
| Minnesota[4] | 17 |
| Mississippi | 3 |
| Montana | 7 |
| Nebraska | 2 |
| New Hampshire | 3 |
| New York[5] | 75 |
| North Carolina | 9 |
| Oregon[6] | 8 |
| Rhode Island[7] | 5 |
| South Carolina | 3 |
| Tennessee | 30 |
| Texas[7] | 57 |
| Utah | 15 |
| Vermont | 3 |
| Washington | 28 |
| Wyoming | 3 |

[1] Law effective in 2002.
[2] Loans allowed if available to all employees.
[3] Loans allowed if for principal residence or if they further the purposes of the organization.
[4] Loans allowed if they further the purposes of the organization.
[5] Loans allowed only by chartered educational institutions and if available to all employees.
[6] Loans allowed for the recruitment of staff.
[7] Loans to directors prohibited; loans to officers permitted.

**SOURCE:** Chronicle analysis of tax returns maintained by GuideStar

way a nonprofit group can demonstrate that, he added, is to compare an executive's total compensation to that paid to executives at three comparably sized organizations—which can include for-profit businesses.

Federal law contains no explicit rules on loans that are not part of an overall compensation package, but legal experts said charities could get in trouble if they offered special conditions on a loan, such as a better rate than available from a commercial lender. However, Stephen Schwarz, a professor at the University of California's Hastings College of Law, in San Francisco, and co-author of a leading law-school textbook on nonprofit organizations, said the laws covering such transactions are "murky," and therefore tend not to be very effective in making clear to charities what is appropriate and what is not.

Most of the 19 states that have enacted laws banning or limiting loans by nonprofit corporations to their officers and directors mirror a model law the American Bar Association adopted and recommended to the states in 1987. Lizabeth Moody, dean emeritus of Stetson University College of Law, in Gulfport, Fla., who helped draft the model law, said the reason for banning such loans is that they create at least the appearance of a conflict of interest in which a charity's funds are used to benefit a top official.

Many states also have a standard that requires trustees to diversify a group's assets among a range of investments so as not to endanger them. That way, Mr. Schwarz and other legal experts said, if one set of investments performs poorly—for instance, stocks in a bear market—any losses could be at least partially offset by putting other assets into more stable investments like government bonds.

Concentrating a nonprofit organization's assets in a single loan or set of loans to one individual, they added, might violate the "prudent man" rule. "If all the funds are loaned to one person who's the original donor, that seems to me a gross violation of state-law standards," Mr. Schwarz said.

MICHAEL VENTURA

PAUL HOSEFROS/THE NEW YORK TIMES

**Diana Aviv (above), of Independent Sector, and Sen. Charles Grassley (right) say they are concerned that some nonprofit groups are offering loans to their top officials.**

### Government's Role

Although legal experts, regulators, and scholars raise questions about nonprofit loans to executives, the chances of federal or state regulators becoming aware of them are minimal.

The IRS relies mainly on Form 990 informational tax returns to monitor the activities of the hundreds of thousands of nonprofit groups that file them, yet the tax agency annually puts only about 20 percent of that data into its computers—and none of the data include information about loans.

Steven Miller, director of the IRS's Exempt Organizations office, said the agency lacks adequate resources to review the tax returns. It has only about 60 staff members to review the forms the IRS receives annually—meaning that the IRS receives an average of 6,000 returns a week for each staff member, including those filed by charities and private foundations. "It is a daunting task, when you consider that a form can have as many as 300 attachments," Mr. Miller said.

State regulators say they, too, lack enough computerized data and staff members to investigate the activities of nonprofit groups. In New York, where 47,000 charities are registered with the state, William Josephson, assistant attorney general in charge of the Charities Bureau in the New York attorney general's office, said none of the information on the registration forms is computerized. New York law bans loans to officers and directors of nonprofit organizations, except those chartered as educational institutions by the state Board of Regents.

> **"In issues of accountability, the public expects a higher standard than the strictly legal standard."**

Florida has an even stronger statute, banning loans to officers and directors by any nonprofit group. Yet not only did *The Chronicle* find that 36 Florida charities reported on tax returns filed from 1998 to 2001 that they had made such loans, but Florida has no state agency that is responsible for enforcing the law on charity loans.

"There's a risk to the residents of the state of Florida and others who donate to Florida charities that their funds could be used in inappropriate ways if the state is not going to have any regulatory review of their operations," said Victoria B. Bjorklund, a New York lawyer who sits on an IRS advisory committee on nonprofit groups.

### Enforcement in California

California requires charities to gain approval from the state attorney general's office before making any loans. The state makes an exception for charities issuing mortgages for newly hired officials.

"We're looking to make sure that the loan is for a proper purpose—something related to the organization, not to help the director start another business—and to know that charitable assets aren't being wasted," said Belinda Johns, supervising deputy attorney general for Northern California in the office's Charitable Trusts section.

Ms. Johns said that in several cases, the state has forced officers or directors to repay loans, and in other instances the state has required charities to reorganize their boards after receiving information about questionable loans.

*The Chronicle* analysis found that 63 nonprofit organizations in California reported on their federal tax returns that they had made loans unrelated to housing costs to officers or directors. When the state attorney general's office reviewed a list of those groups, it found that not one had applied for the required permission. Ms. Johns said the registrar of charities, the official in the attorney general's office who receives charity registration forms, is supposed to review the forms, which include a question about loans.

"It doesn't appear to me that that occurred," Ms. Johns said, noting that the person who held the registrar's job left recently. "I can assure you that it's going to occur now."

Regardless of whether regulators strenuously enforce legal restrictions on loans to top officials, some scholars and legal experts say charities should avoid them simply because the public is likely to be upset that charitable assets are being used to make loans to nonprofit executives.

"In issues of accountability, the public expects a higher standard than the strictly legal standard," said Rikki Abzug, a professor of nonprofit management at New School University's Milano Graduate School of Management and Urban Policy, in New York City. "If your public demands this, then this is what you should be doing."

# Charities Say No-Interest Home Loans Help to Recruit Qualified Executives

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rector of the Art Institute of Chicago. The San Francisco museum last year also paid him $384,583 in compensation.

Mr. Benezra referred questions about the loan to Katie Koch, deputy director of administration and finance at the museum. Ms. Koch said that because San Francisco has the most expensive housing prices in the nation, "trying to get anyone to come into the Bay Area and buy a house that the director of a museum like this would expect to live in was going to require some help."

### Charges of Favoritism

Such explanations do little to persuade critics of no-interest loans. They see such perquisites as hallmarks of inappropriate favoritism and misuse of charitable assets.

Rikki Abzug, a professor of nonprofit management at New School University's Milano Graduate School of Management and Urban Policy, in New York City, said that organizations do not need to offer lavish loan deals to find qualified executives.

"A lot of people are dying to get these jobs," she said. "You have to wonder about the foresight of an executive who either demands or even accepts such a deal, because you have to wonder if that executive is really looking out for the nonprofit first and foremost. You have to wonder about that executive's commitment to the organization's mission. If you have to beg somebody to work for your organization, and engage in a practice that may someday hurt the organization in order to recruit him, you have to wonder if that's the right person for the job."

Added John Vogel, a professor of nonprofit management at Dartmouth College's Tuck School of Business: "When you start by saying this person is such a star that we are going to treat him differently than the other people who work here, you go down a road that's very dangerous. If you are going to be the CEO of a nonprofit, you lead by example. And if the example is, 'I'm going to get something that none of my employees are going to get,' there's a problem with that."

In Mount Sinai's case, Mr. Vogel said, "The nurses at that hospital are going to be upset, and you are asking nurses to do heroic stuff."

### Rethinking a Policy

Mount Sinai officials say they would not repeat the loan today because of the public's mistrust of big-money institutions stemming from the Enron scandal and controversies surrounding several nonprofit groups in the past few years, such as the investigation into executive benefits at the United Way of the National Capital Area, in Washington, and questions about how the American Red Cross used funds donated after the September 11, 2001, terrorist attacks. The public's "perspective on these issues" has changed, said Gary Rosenberg, executive vice president during the period when Dr. Rowe was president, so that now "Mount Sinai would not do this again."

RICHARD DREW/AP/WIDE WORLD

**When Thomas Krens became head of the Guggenheim Foundation, he received a $1-million no-interest loan to buy an apartment; 11 years later he received another $500,000 no-interest loan to help him buy bigger quarters.**

Still, Mr. Rosenberg, now a professor of community and preventive medicine at Mount Sinai, said the medical school's board thought in 1989 that it was necessary to offer the loan to help attract a leader who could improve the school's national reputation. "It had to do with taking a full professor at Harvard, somebody who brought great luster to Mount Sinai, and getting him to come," Mr. Rosenberg said.

Under Dr. Rowe's leadership, Mr. Rosenberg added, the medical school became one of the two dozen top recipients of National Institutes of Health research grants.

"If you want to look at the effect of Dr. Rowe's presidency on a risk-return basis, I think we've done extremely well," he said.

But Mount Sinai also suffered a string of budget deficits following a merger with New York University Hospitals Center that Dr. Rowe helped to engineer in 1997. In the past three years alone, Mount Sinai's losses have totaled about $200-million.

Dr. Rowe declined to comment on his loan, but his spokesman at Aetna pointed to another reason for the loan. The Mount Sinai loan was necessary, said Aetna's Roy E. Clason Jr., to help Dr. Rowe "in obtaining housing suitable to work-related entertaining."

### Museum Chief

A desire for suitable entertainment space is not a unique rationale for giving high-level executives housing loans. The Solomon R. Guggenheim Foundation also cited it in explaining why it lent its top executive, Thomas Krens, not only $1-million to buy an apartment when he first joined the organization in 1988, but also an additional $500,000 in 1999 to purchase a larger condominium.

Mr. Krens, whose compensation in 2001 totaled $481,000, "had outgrown his apartment both in terms of the needs of his family and his need to entertain profes-

## Organizations That Made Interest-Free Loans of at Least $250,000 to Officers or Directors

**The following organizations reported on at least one Form 990 informational tax return from 1998 to 2001 that they were owed payments on interest-free loans provided to officers or directors. The Chronicle has not determined whether all these loans have been repaid.**

| Organization | Loan | Recipient |
|---|---|---|
| Mount Sinai School of Medicine (New York) | $2,250,000 | John Rowe, former president |
| Catholic Healthcare West (San Francisco) | 2,000,000 | Lloyd Dean, chief executive officer |
| San Francisco Museum of Modern Art | 801,000 | Neal Benezra, director of the museum |
| National Geographic Society (Washington) | 800,000 | John Q. Griffin, president of magazine group |
| Association of American Medical Colleges (Washington) | 776,965 | Jordan J. Cohen, president |
| Stanford University (Palo Alto, Calif.) | 750,000 | Laurence R. Hoagland, Jr., former chief executive officer of Stanford Management Company |
| Dana-Farber Cancer Institute (Boston) | 600,000 | Edward J. Benz Jr., president |
| Association of American Medical Colleges (Washington) | 458,850 | Paul Griner, vice president |
| Donald Danforth Plant Science Center (St. Louis) | 450,000 | Roger Beachy, president |
| Episcopal Social Services of New York | 442,068 | The Rev. Stephen J. Chinlund, executive director |
| Combined Jewish Philanthropies of Greater Boston | 432,000 | Barry Shrage, president |
| Salk Institute for Biological Studies (San Diego) | 400,000 | Richard A. Murphy, president |
| Association of American Medical Colleges (Washington) | 348,000 | Michael Whitcomb, senior vice president |
| Dana-Farber Cancer Institute (Boston) | 300,000 | Stanley J. Korsmeyer, trustee ex-officio |
| Council on International Educational Exchange (New York) | 288,750 | William Cressey, vice president |
| Harvard University (Cambridge, Mass.) | 285,000 | Paul S. Grogan, vice president for government, community, and public affairs |
| Association of American Medical Colleges (Washington) | 258,600 | Ellen Julian, assistant vice president |
| Columbus Jewish Federation (Ohio) | 250,000 | Hal M. Lewis, president |

**SOURCE:** Chronicle analysis of tax returns maintained by GuideStar

sionally," said Anthony Calnek, a spokesman for the foundation, which runs the Guggenheim museum in New York as well as those in Berlin, Las Vegas, Venice, and Bilbao, Spain.

Mr. Krens referred all questions about the loan to Mr. Calnek.

The $1.5-million the foundation lent Mr. Krens is worth $2.1-million today, so that even if Mr. Krens repaid those loans in full tomorrow, after taking inflation into account, the Guggenheim Foundation would lose $615,000 on the loans because it charged no interest.

**Alternative Approach**

Some nonprofit organizations in high-cost regions of the country, however, have found ways to help executives afford more expensive housing without sacrificing charitable assets.

The Community Foundation Silicon Valley, in San Jose, Calif., devised a different approach when it hired Peter Hero as its president in 1988.

"I'd been a college president in Maine, where the housing was, needless to say, vastly less expensive than it was out here," said Mr. Hero. "The costs here were a severe sticker shock. When I was offered this job, I said to the board that it would not be possible for me to come without some sort of assistance."

> **"When I was offered this job, I said to the board that it would not be possible for me to come without some sort of assistance."**

The foundation gave him a $487,500 mortgage, which he would not have to repay until he sold his house or left the organization. At that point, he would have to pay the foundation 60 percent of any increase in the value of his home.

Housing prices in the region shot up so significantly, in fact, that a few years later the foundation had to restructure the deal to avoid violating state law designed to forbid lenders from charging too much interest.

Had Mr. Hero sold his house under the original terms of the mortgage, his payment to the Silicon Valley Community Foundation would have been equivalent to his having paid more than 20 percent in interest on the loan annually—and state law bars any interest rate above 10 percent.

Under the new deal, Mr. Hero is paying the foundation 8 percent annually in interest.

"The foundation was using this approach to do two things," Mr. Hero said. "The first was to enable me to come here. Also, they were investing in something that could eventually produce a return for the foundation. They felt they were being good stewards of the assets."

PATRICK MURPHY-RACEY, FOR THE CHRONICLE

**Ronnie Webb, executive director of Kids Incorporated, borrowed $140,000 from the charity and pledged to repay it at a higher interest rate than its other investments. But the loan upset the local United Fund, which withdrew its support.**

# How a Loan Deal Backfired on One Nonprofit Leader

**By Harvy Lipman and Grant Williams**

RONNIE WEBB has a message for nonprofit groups thinking about making loans to one of their officials:

Don't.

Mr. Webb speaks from experience.

In June 2000 the board of Kids Incorporated, the Crossville, Tenn., charity of which he is executive director, voted to lend him $140,000, which he planned to use to buy a restaurant property but eventually spent to start a restaurant on property that he already owned. He thought he was doing a favor for the charity, which provides developmental programs for preschool children with disabilities. The organization has annual expenditures of about $300,000 to $400,000 and gets 60 percent to 75 percent of its revenue through government contracts.

Mr. Webb signed a note, promising to repay the money with 5 percent interest over 15 years, a better return than the 4 percent the organization was getting by keeping the money in local banks. In the event that interest rates rose in subsequent years, Mr. Webb agreed to pay back his loan at a level that would always be 1 percentage point above the going rate for bank investments.

For security, he put up 52 acres of undeveloped land that he had previously purchased. If for some reason he could not repay the loan, the charity would take ownership of this acreage.

"As an organization, we are very conservative and cautious with our money," said Sharon Potter, president of Kids Incorporated. "We looked at the loan to Ronnie as an investment, which just happened to be a loan, that would give us a better return on our money."

The loan arrangement also figured to be profitable for Mr. Webb, who expected to make money from his restaurant enterprise.

"Then the whole thing blew up in my face," said Mr. Webb, who has worked at the organization for most of the past 27 years.

**Concerns Raised**

When they realized the loan had been made, after taking a second look at the charity's financial statements, leaders of the local United Fund of Cumberland County, a charity similar to the United Way that collects gifts through on-the-job campaigns, decided last year to stop supporting Kids Incorporated in 2004. The United Fund provided Kids Incorporated with more than $12,000 in 2003.

"Our board didn't think Ronnie had done anything wrong: He wasn't taking advantage of the organization, he's done a great job, and what Kids Incorporated does in our community is amazing," said Holly Neal, the United Fund's director. "But our board felt that if the charity had that much money to loan to someone, then it seemed that they didn't need our money."

The United Fund also thought that Kids Incorporated had too much undesignated money in reserves, according to Ms. Neal—more than $800,000 in savings and temporary cash investments at the end of its 2002 fiscal year.

Ms. Neal said that after a series of national controversies—including questionable fund-raising practices at some charities in the wake of the September 11 terrorist attacks and scandals at Enron and other corporations—"it's a different world" in terms of the accountability expected of nonprofit and other organizations by the public. "Ronnie just didn't understand that the loan didn't look good," she said.

The county government followed suit last year, cutting off more than $16,000 in funds Kids Incorporated would have received in 2003 and 2004. The Cumberland County Commission decided to eliminate the funds because it was concerned about the loan to Mr. Webb.

"The commission hated to do it," said Sharon York, a commission member who opposed the move because she worried about the effect on children in the charity's programs. "But a lot of people in the community just didn't want their tax money going to an organization that was financially able to make loans."

The loss of the United Fund and local government money left Kids Incorporated with about $30,000 less to spend than it had anticipated.

**'Out in the Open'**

"We were stunned by the controversy," said Mr. Webb. "We felt we'd done nothing wrong, and the loan was always out in the open. I was totally convinced that, when questions were raised about the loan, it would be a simple matter of my explaining what was going on and everybody would be, like, 'OK, we see, that's fine.'"

Ms. Potter, president of Kids Incorporated, said she was shocked. "This is a small town and everybody got to looking at us like we were Enron," she said. "I thought, good gracious, it was an investment tool that got caught up in public perception."

In response to the controversy, Mr. Webb and his charity's board agreed that he would repay his loan in full last fall. He said he wound up providing the charity with $4,000 more than it would have reaped had the organization never lent him the money.

Kids Incorporated's board of directors voted to put $500,000 of its reserves into a designated fund that eventually will be used to buy land and construct a building to house the charity, which currently leases its space.

Yet Mr. Webb said that, because his organization is unhappy with the United Fund's handling of the matter, he does not think Kids Incorporated is likely to again seek money from the group—even though he is a member of the United Fund's board. Mr. Webb said he hopes that the county government will decide again to provide funds to his charity.

For now, Kids Incorporated must try to make up for the hole in its budget, and for the first time it may send out direct-mail solicitations this spring. "We're hoping folks in the community will realize that we have lost dollars, and that, in order for us to maintain a strong program, they need to give more personal donations," said Mr. Webb. "When you lose these kinds of dollars, it's difficult to make up, if not impossible."

Ms. Potter said that fund-raising results from a Kids Incorporated gala to be held this spring will provide the first indication of how much the loan controversy has affected the attitude of supporters of the charity. "We'll find out soon," she said.

Mr. Webb's experience over the past year has at times been "extremely traumatizing," he said. "My interest was totally to try to benefit the agency, and never hurt it, but it totally backfired." Added Mr. Webb: "It's like a *Twilight Zone* nightmare. Based on my experience, I would not ever advise any directors of nonprofits to ever do anything like we did."

# Donors Set Up Grant-Making Groups, Then Borrow Back Their Gifts

**By Harvy Lipman and Grant Williams**

IN 1998, the Muralt family of Missoula, Mont., started the Muralt Family Foundation to provide funds for a local children's shelter.

Walter R. Muralt, and his father, Gary D. Muralt, owners of a highly successful truck-stop business, donated $1.4-million to their foundation over the next five years, taking tax deductions for the contributions. They and companies they control then borrowed $758,000 from the foundation, using the money to pay off a bank loan owed by Gary Muralt and to invest in real estate and a wireless-communications business. During that time, the organization used the repayments the Muralts made on the loans to donate $107,506 to charity.

Although it calls itself a foundation, the Muralts' charity is actually a special legal entity known as a supporting organization, a type of nonprofit group that Congress established 35 years ago when it overhauled the laws governing private foundations. Gary and Walter Muralt both serve on the organization's board.

KURT WILSON

**Gary D. Muralt and Walter R. Muralt, his son, donated $1.4-million to create the Muralt Family Foundation. Then they and companies they control borrowed back $758,000 for business investments.**

### Alternative to Foundations

Supporting organizations are designed to finance the work of specific charities. Many universities and other large nonprofit groups have supporting organizations that generate revenue for them by investing in stocks or by operating businesses.

In some cases, however, wealthy people who want to set up their own philanthropic groups use supporting organizations as an alternative to private foundations. Supporting organizations offer a number of advantages. While private foundations are barred from making loans to officers or directors or engaging in any other financial dealings with them, supporting organizations are not. Supporting organizations also are not required to pay the federal excise tax that most private foundations must.

Federal law also allows individuals to benefit financially from their involvement with their supporting organizations. They can donate hundreds of thousands or even millions of dollars to a supporting organization, get a tax deduction on the gift, appoint themselves along with family members, their lawyers, or business associates to the organization's board, and borrow as much as the entire net assets of the organization as long as they have the board's approval. Donors and their family members are not allowed to hold a majority of seats on the board, or appoint directors they "control." Internal Revenue Service rules count a donor's employee as someone subject to the donor's control; however, they do not say whether a donor's lawyer or business partner falls into the same category. Legal experts said tax lawyers disagree on whether business associates should be viewed as being under the donor's control.

Borrowers can use the loan for any purpose—personal or business—and keep whatever profits flow from investing the money. The only legal requirements are that they pay off the loan at a rate no lower than the prevailing interest rate, and the supporting organization must award most of the repayments to charities.

### IRS Examining Issue

Internal Revenue Service officials, who said the tax agency has begun to examine the potential for abuse by donors who set up supporting organizations, have no data on the number of such groups or the amount of loans they make.

But a *Chronicle* analysis of Form 990 informational tax returns found 18 supporting organizations that made loans of $100,000 or more to their officers and directors from 1998 to 2001. Together, the loans totaled nearly $7-million. And at 10 of those supporting organizations, the loans equaled half or more of the groups' total assets.

After *The Chronicle* showed a summary of its findings on supporting organizations to Sen. Charles Grassley, the Iowa Republican who is chairman of the Senate Finance Committee, he denounced the loan practice. "We've seen the unending creativity of abusive tax transactions in corporations," the senator said in a written statement. "It sadly appears that we're seeing the same creativity with nonprofit corporations. Those involved should be ashamed of their conduct."

Mr. Grassley, who has been investigating the financial activities of charities and private foundations for more than two years, said he would consider legislation to change the rules on supporting organizations. The practice at some supporting organizations of lending substantial portions of their net assets to an officer or director, he added, "appears to be an abusive transaction, far beyond what Congress intended."

### Lending Money

Among the supporting organizations that have made loans, according to *The Chronicle*'s investigation, is the Hill Family Foundation, in Salt Lake City.

In 1999 Spencer K. Hill, a Salt Lake City real-estate developer, created the organization, naming a local charity called the Wishes Are Forever Foundation as the group it supports. (See article on Page 14.)

Mr. Hill financed his organization by donating a duplex he owned in Newport Beach, Calif. In a written response to questions from *The Chronicle,* Mr. Hill said he "received a tax deduction for the fair market value of the property." The supporting organization then sold the property for $225,917 in July 1999. The following year it lent almost all of its assets—$220,655—in two loans to Mr. Hill and his company, SKH Properties.

Mr. Hill said he used the money "to pay off loans and invest in real estate." He and his company are repaying the loans over 15 years—one at an interest rate of 14.5 percent and the other at 8 percent, with the family foundation using the payments to make grants to charity. Mr. Hill said the supporting organization has given approximately $70,000 to charity since it was set up. But he said that any profits generated by the investments he has made with the borrowed funds "revert back to SKH Properties and me."

In Minnesota, Ken Malecha, who is former president of Best Brands Corporation, a baking-industry supplier in Eagan, Minn., established the Malecha Family Foundation in September 2000 to support a volunteer fire department that serves a small town and surrounding area. Four months after its formation, the charity lent Mr. Malecha $800,000 of its $1-million in net assets that year for reasons not specified on its 2000 Form 990 tax return. Mr. Malecha was to repay the money in one year at 8 percent interest.

"Mr. Malecha believed that under the investment climate then in effect, the terms of the loan significantly exceeded the foundation's regular investment return" and thus were beneficial to the charity, said his lawyer, Thomas E. Brever, in an e-mail message.

But Mr. Brever added that the charity later decided the loan to Mr. Malecha was a "mistake" after getting an opinion from professional advisers that it could be viewed as unseemly.

"While he was factually correct in his beliefs and certainly did nothing violative of either the letter or spirit of the law, Mr. Malecha agrees that even an appearance of impropriety should be avoided," said Mr. Brever. Mr. Malecha "has repaid the loan in full with interest, and has pledged not to take loans from the foundation in the future," said Mr. Brever.

In its first two years, the Malecha Family Foundation gave a total of $15,000 to the fire department that it was established to support, according to the tax returns filed by the charity with the federal government.

In another Utah case, Rock T. Ballstaedt and his wife, Terri, of

## Loans at Supporting Organizations

**These groups, set up under federal tax law as supporting organizations, made loans of at least $85,000 to their officers or directors, or to businesses those people control.**

| | Net assets | Amount owed by officers or directors | Year of most recent tax return available |
|---|---|---|---|
| Muralt Family Foundation (Missoula, Mont.) | $1,275,952 | $730,295 | 2002 |
| Georgetown Title Foundation (Sandy, Utah) | 662,263 | 637,200 | 2001 |
| Cruffel Foundation (Jackson, Wyo.) | 1,960,281 | 600,000 | 2002 |
| Bonnemort Foundation (Salt Lake City) | 821,657 | 600,000 | 2001 |
| Rita & Herbert Rosen Family Foundation (Seattle) | 2,491,376 | 545,000 | 2001 |
| Ross Charitable Support Foundation (Pleasant Hill, Ore.) | 605,318 | 420,383 | 2001 |
| Remembrance Foundation (Alpine, Utah) | 334,179 | 332,000 | 2002 |
| Jewkes Family Foundation (Sandy, Utah) | 322,828 | 294,409 | 2001 |
| Scott Olsen Foundation (Salt Lake City) | 275,752 | 275,752 | 2001 |
| Pledger Family Foundation (Salt Lake City) | 913,712 | 264,630 | 2002 |
| Newton Family Foundation (West Jordan, Utah) | 459,185 | 225,050 | 2002 |
| Hill Family Foundation (Salt Lake City) | 217,594 | 219,048 | 2002 |
| Rock and Terri Ballstaedt Charitable Supporting Organization (Midvale, Utah) | 186,292 | 186,000 | 2001 |
| Brut Charitable Supporting Foundation (Jacksonville, Fla.) | 356,714 | 150,000 | 2001 |
| Robert Driscoll and Julia Driscoll and Robert Driscoll, Jr. Foundation (Corpus Christi, Tex.) | 188,837,926 | 129,853 | 2001 |
| Ivan and Vilma Halaj Family Foundation (Rancho Palos Verdes, Calif.) | 4,606,190 | 111,855 | 2000 |
| Fred & Cheryl Hale Support Foundation (Centerville, Utah) | 935,340 | 100,000 | 2002 |
| Lund Family Foundation (Centerville, Utah) | 99,687 | 86,400 | 2001 |

**SOURCE:** Chronicle analysis of tax returns maintained by GuideStar

Salt Lake City, donated $186,000 in 1998 to set up the Rock and Terri Ballstaedt Charitable Supporting Organization on behalf of several Mormon charities. Days later the Utah organization lent Mr. Ballstaedt an identical amount. The organization has not listed on its federal tax returns what Mr. Ballstaedt, who is in the export-financing business, used the loan for, although federal regulations require it to do so. Mr. Ballstaedt declined to answer questions about what he did with the money. In its first four years of operation, the organization donated $24,610 to charity.

Altogether, 10 of the supporting organizations identified by *The Chronicle* are in Utah. Kirk Torgensen, chief deputy attorney general in the criminal division of the Utah attorney general's office, said the loans and other activities of the groups are worthy of investigation by his office. Many supporting organizations, including the ones *The Chronicle* looked at in Utah, are commonly set up as trusts (a legal structure in which groups are overseen by appointed trustees rather than by corporate boards), and state law says trustees must invest and manage trust assets "solely in the interest" of the organization.

The circumstances of the loans raise questions about "state tax issues," Mr. Torgensen said. Adding that "somebody ought to be looking into them," he said that he would refer information about the loans to John McCarrey, who heads the attorney general's tax and revenue division.

Lawyers for the supporting organizations identified by *The Chronicle* said that loans to officers and directors do not violate the letter or spirit of federal and state laws. Instead, they said, having the officials invest the borrowed money protects the organizations.

Miles E. Lignell, the lawyer for the Muralt Family Foundation, said the Muralts' loan agreements guarantee that the supporting organization will be paid and require the borrowers' personal property to be put up as security. Thus, he said, the loans work to the supporting organization's advantage.

"Direct investment by the foundation in these projects [in which the Muralts invested the borrowed money] was considered by the board of directors to be too risky and would not generate the secure regular source of income needed for charity," he said in a written reply to questions from *The Chronicle.*

Such arrangements are not always secure, however. Mr. Ballstaedt guaranteed his supporting organization's loan by putting up his 17-room home in Salt Lake City as security. At that time, however, Mr. Ballstaedt and his wife already had liens against their house for home-equity loans totaling $855,000. In March 2000, the supporting organization released its claim on the home, leaving the loan to Mr. Ballstaedt unsecured. Fifteen months later the Ballstaedts defaulted on one of their earlier home-equity loans. The house was taken by the bank and sold at auction.

Mr. Ballstaedt acknowledged that the supporting organization's loan is now unsecured. "There's a plan to give additional security in the future, but it hasn't been done," he said.

### Congressional Intentions

Legal experts say that loans to top officials were not what Congress had in mind in 1969 when it changed the laws on private foundations and, concurrently, established supporting organizations.

Congress's original proposed definition of a private foundation would have included organizations like Princeton University Press, a publishing group that generates revenue for the university, and other organizations that existed to produce funds for nonprofit groups, said Stanley Weithorn, a lawyer who worked closely with the Congressional staff members who developed the legislation.

"There were a considerable number of those kinds of things all over the country," said Mr. Weithorn, who now is a lawyer in Phoenix. "Congress was really after a lot of fraudulent structures that never were charitable at all that were set up as private foundations."

The legislation ended up including a provision that created supporting organizations. The wording was fairly broad, he said, to allow a range of existing legal structures that had been used to create those organizations to escape the restrictions the legislation was imposing on foundations.

Under the changes made in 1969, donors can set up an organization that is very similar in structure to a private foundation. But by designating it as a supporting organization and naming a specific charity to which it will make grants, donors can avoid the restrictions on foundations, including the ban on loans to officers and directors.

More than three decades after the creation of supporting organizations, the Internal Revenue Service has begun a review of their activities. "We have found abuses in the supporting organizations area," said Steven Miller, director of the revenue service's Exempt Organizations office. "We have a series of cases that have been referred to us. We are taking concrete steps to figure out what's going on and to do a study."

Mr. Miller said he could not comment on any of the specific cases *The Chronicle* found in its review because of privacy laws designed to protect taxpayers. He added that the agency will not wait for the study to be completed before taking action in cases in which it concludes supporting organizations are abusing the law.

While most supporting organizations do not use significant portions of their assets to provide loans for top officials, according to experts in nonprofit law, when it does happen, "it begins to call into question what the organization is all about," said Marc Owens, Mr. Miller's predecessor at the IRS.

Added Mr. Owens, "The issue with a loan, particularly one going to an insider, is that it's taking the assets of the organization away from doing something charitable."

## *How The Chronicle Tallied Loans Made by Charities*

Nonprofit groups report loans they make to directors, officers, and other key employees in two sections of the Form 990 informational tax returns they file. The Internal Revenue Service defines key employees as people with powers similar to those of officers, directors, or trustees.

One part of the Form 990 in which loans are reported is a checkbox in which groups must indicate whether they have made loans or extended credit to their top officials. The other is a line on which they must report how much debt they are owed by the officials.

For the past several years, GuideStar, a nonprofit organization in Williamsburg, Va., has entered data from the tax returns into a computer database, including the information about loans to officers and directors. *The Chronicle* obtained from GuideStar data for all the 10,700 charities that reported having debt with officers and directors on returns filed from 1998 through 2001.

The debt listed on a tax return does not necessarily arise from a loan. It can include a pledge from a top official to the organization, or some other type of financial commitment.

The IRS instructions require charities to include with their returns attachments showing whether the debt arose from a loan and, if so, the amount of the loan, the interest rate and other repayment terms, and what the loan is to be used for.

*The Chronicle* found that 2,278 of the groups listed at least $10,000 in debt, and reviewed their returns to determine whether they had made loans and what were the terms of the loans that were identified. In about 200 cases, *The Chronicle* was able to determine that organizations had included non-loan debt, such as payments owed by related charities. In several cases, nonprofit groups mistakenly listed debts they owed on the line reserved for outstanding debt of officers and directors.

## *Reporting Loans: What the IRS Says*

The Internal Revenue Service's instructions for the federal Form 990 informational tax return tell charities they must report—and provide details of—loans made to directors, officers, and other key employees.

Charitable organizations with revenue of $25,000 or more are required to fill out the Form 990.

Failure to fully fill out the form may result in penalties for filing an incomplete tax return, the tax agency says. Charities must provide total dollar figures for all debts due from such officials, including all secured and unsecured loans to them, on Line 50 of the form.

The IRS also requires that groups provide additional information about loans in a schedule attached to the form. The information that the IRS requires for each outstanding loan is:

1. Borrower's name and title.
2. Original amount.
3. Balance due.
4. Date issued.
5. Maturity date.
6. Repayment terms.
7. Interest rate.
8. Collateral provided by the borrower.
9. Description and fair market value of the cash, stock, or other items provided to the borrower by the charity.

The potential penalty for charities with annual gross receipts of $1-million or less that fail to provide any of this information is $20 a day until the incomplete return is corrected, but may not exceed $10,000 or 5 percent of the organization's annual gross receipts (whichever is the smaller sum).

Charities with gross receipts of more than $1-million face a penalty of $100 a day, with a maximum penalty of $50,000.

■ **To see** a list of the 2,278 charities that were owed $10,000 or more by their top officials, go to *The Chronicle*'s Web site at:

**http://philanthropy.com**

# *One Utah Lawyer Helped Create 8 Groups That Lent Money to Donors or Officers*

**By Harvy Lipman and Grant Williams**

As *The Chronicle* analyzed the records of supporting organizations that lent substantial sums of money to their officers or directors, one name appeared repeatedly:

Richard H. Bradley, a Salt Lake City lawyer.

Supporting organizations are nonprofit groups set up to support specified charities. In many cases, wealthy individuals establish supporting organizations as a way to create their own philanthropy. Sometimes those individuals, who are usually directors or officers of their organizations, also take large loans from them, to be repaid with interest. The organizations then use those repayments to make grants to charity.

From 1998 through 2001, *The Chronicle* found that 10 supporting organizations made loans to directors of $100,000 or more that accounted for half or more of each of the groups' assets. Mr. Bradley helped set up eight of those organizations.

"The first one I set up for a client because another attorney suggested it to me," he said. Other wealthy people interested in donating to charity were referred to him, he said, and he helped them set up supporting organizations. "I don't promote them. I don't have a Web site or anything like that."

"Most of my clients are members of the Mormon Church, where people give 10 to 15 percent of their money to charity," he added. "They're not doing it to get a tax break. They're doing it because they want to create an orchard so they can give away the fruit every year. They're also teaching their children about philanthropy."

Mr. Bradley is also a director of seven of the supporting organizations he has helped to establish, and previously served as a director of the other one. Of the $3.1-million the founders of those eight groups donated to the supporting organizations from 1998 through 2001, the contributors borrowed back nearly $2.5-million.

Five of the organizations Mr. Bradley has helped establish make the bulk of their grants to another group he runs with his family, called the Wishes Are Forever Foundation. The groups donated at least $209,000 to Wishes Are Forever from 1999 through 2001.

### Tracking the Returns

While Wishes Are Forever's stated purpose is to make grants to charities that help children, what it spent its money on is unclear.

The Form 990 informational tax returns nonprofit groups like Wishes Are Forever file with the Internal Revenue Service are public documents, but the IRS responded to a *Chronicle* request for the organization's forms by saying that its two most recent returns are not "available." That means, according to the IRS, that either the returns "have been checked out by another department" or they were never filed.

> **"They're not doing it to get a tax break. They're doing it because they want to create an orchard so they can give away the fruit every year."**

Marc Owens, a Washington lawyer who formerly headed the IRS division that oversees nonprofit groups, said that if the returns were checked out by another department, that would probably mean they were being examined by agents whose job is to decide which groups to audit.

Federal law requires charities to make copies of their tax returns available upon request. Mr. Bradley responded to a *Chronicle* request for his charity's returns by sending a complete version of its return for 1999, the year the group was set up and before it had received any funds to distribute, and incomplete copies of those for 2000 and 2001.

The latter two returns said the group made $2-million worth of charitable grants, but omitted required sections showing what organizations received the money. When *The Chronicle* contacted Mr. Bradley's office to ask for the missing parts of the returns, a woman who identified herself as his secretary said he was "too busy to search for more documents," despite the federal requirement that the full returns be made public. He has not returned at least a half-dozen phone calls, nor has he responded to written requests for further information.

GuideStar, a nonprofit organization in Williamsburg, Va., that has a contract with the IRS to receive copies of all nonprofit tax returns for posting on the Internet, said it has no record of ever having received any of Wishes Are Forever's tax forms. Mr. Owens said the fact that GuideStar never received the returns could mean they may never have been filed with the IRS.

In a telephone interview with *The Chronicle* before he sent any information about his organization, Mr. Bradley said Wishes Are Forever has donated money to a wide range of nonprofit groups, including "the Church of Latter-day Saints, universities, and humanitarian causes like the United Way, the March of Dimes, and the Make-a-Wish Foundation."

A spokesman for the Church of Jesus Christ of Latter-day Saints said that as a matter of policy it never comments on who makes donations. After searching their records, officials of the United Way of Salt Lake and the Utah March of Dimes said they have never received donations from Wishes Are Forever. According to the Utah chapter of the Make-a-Wish Foundation, Mr. Bradley's group donated about $40,000 from 1999 through April of last year.

*The Chronicle* could find no other public records to show what Wishes Are Forever did with the remainder of the $2-million Mr. Bradley said it had donated to charity.

## Loans by Supporting Organizations Affiliated With Richard H. Bradley

**Richard H. Bradley, a Salt Lake City lawyer, has helped to set up the following supporting organizations that made loans to their officers or directors.**

| Organization | Net assets | Debt owed on loans to officers or directors | Fiscal year of most recent tax return available to the public |
|---|---|---|---|
| Georgetown Title Foundation (Sandy, Utah) | $662,263 | $637,200 | 2001 |
| Hill Family Foundation (Salt Lake City) | 217,594 | 219,048 | 2002 |
| Jewkes Family Foundation (Sandy, Utah) | 322,828 | 294,409 | 2001 |
| Lund Family Foundation (Centerville, Utah) | 99,687 | 86,400 | 2001 |
| Newton Family Foundation (West Jordan, Utah) | 459,185 | 225,050 | 2002 |
| Scott Olsen Foundation (Salt Lake City) | 275,752 | 275,752 | 2001 |
| Pledger Family Foundation (Salt Lake City) | 913,712 | 264,630 | 2002 |
| Remembrance Foundation (Alpine, Utah) | 334,179 | 332,000 | 2002 |

**SOURCE:** Chronicle analysis of tax returns maintained by GuideStar