United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

March 15, 2013

Dr. John Sexton
President
New York University
70 Washington Square South
New York, NY 10012

Dear President Sexton:

Universities receive special tax-exempt status primarily because they are responsible for educating students. The benefit of this special tax exemption is intended to be passed on to students to reduce the cost of their education and increase its quality. In recent years, however, college tuition has soared, and there is little evidence that these increased costs measurably improved education.

During the confirmation of Jack Lew, I became aware that New York University (NYU) awarded Mr. Lew subsidized mortgages and gave Mr. Lew a $685,000 severance payment when he took a higher paying private sector job with Citigroup. This led me to examine more closely whether NYU uses its tax-exempt status primarily to benefit its students or to compensate university administrators.

According to the *New York Times*, NYU provided $17.4 million in real estate and severance to just four employees. These funds alone could have provided full scholarships to close to 10% of NYU's 4,700 member freshman class.

A recent e-mail from Martin Dorph, NYU's Executive Vice-President for Finance and Information Technology, to the NYU community detailed NYU's mortgages to 168 individuals, including four non-faculty members, of $72 million or approximately $429,000 per individual. *NYU Local*, however, reports that top administrators receive loans that average $1 million or more, including a $5.73 million loan to Law School Dean Richard Revesz, which comes in addition to his $1.04 million salary.

Mr. Dorph stated that, "These loans are offered under a variety of terms, and may vary by school. The vast majority of loans provide an investment return to the University, either bearing a market rate of interest or sharing in the increased value of the property upon maturity or sale."

To use a concrete example, it appears that Mr. Lew was a beneficiary of both types of loans. His contract specified that he would receive two types of mortgage assistance. First, a

$500,000 mortgage with an interest rate calculated at the same rate earned by, "the bond portion of NYU's endowment in the quarter preceding the signing of the mortgage…." This mortgage however, was forgivable in $100,000 per year installments. In addition, in his written responses to Finance Committee questions, Mr. Lew also said, "NYU provided an annual payment equal to the interest paid on (this) mortgage…." This would appear to undercut Mr. Dorph's statement that "the vast majority of loans provide an investment return to the University…bearing a market rate of interest"—unless Mr. Lew's arrangement was an unusual one at NYU.

Mr. Lew also received a $1.5 million "shared appreciation mortgage." This rare mortgage product allows a borrower to receive below-market interest rate financing in return for giving the lender a share of the home's equity. This specialized mortgage product is not available to the general public, and the Internal Revenue Service placed shared appreciation mortgages on its "No Ruling" list in 1983. Despite this, it appears that NYU and other universities appear to use them extensively.

Mr. Dorph also claimed that "Few loans are forgiven, and forgivable loans are made for retention purposes only, typically at the request of the dean." In Mr. Lew's case, however, his contract was not structured to create a retention "bonus," traditionally understood as a lump sum payment after a continued period of employment. Rather, $100,000 of his loan was forgiven every year he remained at NYU. Mr. Lew could have left NYU after one year and still received $100,000. This appears to do little to help NYU "retain" employees.

Mr. Dorph also says, "In some cases, when…people are hired, there are employment agreements that dictate obligations – such as severance – when they depart. To be clear: We do not give gifts – we honor employment agreements."

NYU's employment contract with Mr. Lew, as it was provided to the Senate Finance Committee, does not indicate that Mr. Lew was entitled to severance payments. However, Mr. Lew in his response to Senate Finance Committee questions says that he received a "one-time severance payment upon my departure."

Further, Mr. Lew's contract with NYU, began on May 15, 2001, and was for a term of five years. Mr. Lew's next contract with Citigroup started June 17, 2006. The date of his departure from NYU is unclear. It appears that even if a severance agreement was entered into, Mr. Lew had fulfilled all or nearly all of his five-year contract, which raises the question of why he would be eligible for a severance payment.

In fact, in addition to this payment at the end of his tenure, Mr. Lew's employment contract, as written by NYU, also stipulates that he receive another $100,000 upon "execution of this agreement." In addition to his severance payment, NYU also gave Mr. Lew in effect a signing bonus.

Rather than simply provide Mr. Lew with compensation through salary, NYU appears to have given Mr. Lew an unusual array of benefits in an unusually opaque way. So, the actual value of his total compensation package is difficult to ascertain precisely. This raises larger questions regarding NYU's executive compensation structure in light of its tax-exempt status. To provide transparency on these questions, please provide the following documents:

1. Please provide all 990 forms from 2000 to the present.

2. Please provide all loan documents for loans made to individuals from 2000 to the present.

   These documents should include the original purpose of the loan, whether that purpose was met, the interest rate and payment schedule when the loan was made, the security and value for the loan and whether there were any changes to the terms of the loan.

3. Please describe the process of approving loans, how the interest rate is determined and the material that is prepared in support of such loans.

4. Please provide a detailed description of how NYU's non-faculty mortgage loans are substantially related to NYU's tax-exempt purpose.

5. Please provide minutes from all Board meetings where the topic of mortgage loans for NYU executives was discussed including documentation of each board member's vote on these mortgages.

6. Please provide the names and titles of the NYU officials who decided to approve the executive mortgage loan for Mr. Lew. Please provide all documents, including Board minutes, memorializing that decision.

7. Please provide a list of all of loans that have a 0% interest rate and all loans: (a) in which there was partial or full loan forgiveness, (b) in which additional payments were made to employees as bonuses in the amount of the interest charged, or (c) interest was paid by NYU on behalf of the borrower.

8. Please describe how much interest was forgiven or paid by NYU and when in the term of the loan this forgiveness or interest payment occurred.

9. Please describe how NYU complied with Internal Revenue Code regulations regarding the treatment of loans with below-market interest rates.

10. Please provide the details of all shared appreciation mortgages including how the tax consequences of these loans are calculated and how NYU complied with Internal Revenue Code regulations.

11. Did NYU treat income derived from the executive mortgage loan program as Unrelated Business Income (UBI)? If so, please provide the IRS filings reporting the UBI and reflecting the amount of UBI tax paid. If not, please explain why not.

12. Please provide details of all severance payments of $100,000 or more made from 2000 to the present.

13. When did Mr. Lew leave NYU?

14. Please provide details of all signing bonuses of $100,000 or more made from 2000 to the present.

15. What comparable salaries did NYU use to determine Mr. Lew's compensation?

16. Please provide all board minutes and voting information regarding Mr. Lew's compensation.

17. Did NYU evaluate whether Mr. Lew's compensation met the standards under IRS Code section 4958(a) (1) and (2)?

    a. If so, please provide those evaluations.

    b. If not, why not?

Thank you for your cooperation and attention in this matter. We would appreciate a response by March 29, 2013. If you have any questions, please do not hesitate to contact Chris Lucas for Ranking Member Grassley at (202) 224-5225.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member
Committee on the Judiciary