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Donors Sweetened Director's Pay at MoMA

By STEPHANIE STROM

Glenn D. Lowry, director of the Museum of Modern Art for nearly 12 years, has long been one of the highest-paid museum officials in the country, with salary, bonus and benefits totaling $1.28 million in the year that ended June 30, 2005, the most recent period for which figures are publicly available.

Yet for more than eight years, his income was even higher than the museum reported in its tax forms, thanks to a trust created by two of the museum's wealthiest trustees, David Rockefeller and Agnes Gund.

Mr. Rockefeller, Ms. Gund and Ronald S. Lauder, another trustee, made tax-deductible gifts to the trust, the New York Fine Arts Support Trust, as did Mr. Rockefeller's brother Laurance, who donated a Bonnard painting valued at $800,000 that was later sold. The trust used the money to make payments to Mr. Lowry.

Between 1995 and 2003, that trust paid him a total of $5.35 million — in amounts ranging from $35,800 to $3.5 million a year — aside from the compensation supplied by the museum. Last year, those trust payments attracted questions from the New York State attorney general's office. To address those concerns, the museum disclosed some of the payments in a one-page supplement dated Jan. 5 and filed with the attorney general's office and with GuideStar, a Web site that provides data and research about nonprofit groups. The state was satisfied with that response.

The Internal Revenue Service does not discuss specific taxpayers. But former state and federal regulators contacted by The New York Times said the system of payments by the trust was unorthodox and raised many questions, ranging from the completeness of the trust's and the museum's tax reporting to whether the I.R.S. was fully aware of the trust's purpose when it granted it a tax exemption.

Asked for comment, Mr. Lowry and the museum referred all questions to Kim Mitchell, a MoMA spokeswoman. Pressed for details, she said in an e-mail message that the trust had been created as part of the effort to recruit Mr. Lowry to take over the museum in 1995.

For example, while the museum covered the down payment Mr. Lowry made on an apartment he bought in Gracie Square that year, the trust reimbursed him for all his mortgage payments.

Then, in 1999, the trust bought that apartment for MoMA in a $3.4 million purchase from Mr. Lowry. Mr. Lowry pocketed the $1.3 million in profit on the sale, Ms. Mitchell said, "in lieu of any deferred compensation the museum would have had to provide in the future."

Ms. Mitchell said Mr. Lowry paid income taxes on all the money he received from the trust.

And in 2004, the museum purchased an apartment in Museum Tower on the MoMA campus on West 53rd Street, where Mr. Lowry, 52, now lives rent-free.

Mr. Lowry and his stewardship of the museum have been a focus of growing art-world attention — often highly critical — since the museum reopened in November 2004 after an $858 million expansion. Some have faulted MoMA for a corporate atmosphere in which the intimacy of the viewing experience has been lost and suggest that curators have forfeited too much of their autonomy.

Of course, like college presidents, star professors and top hospital executives, directors of the nation's most prestigious museums routinely receive generous fringe benefits, like free rent or interest-free loans for home purchases. Directors of the Metropolitan Museum of Art and the Guggenheim Museum also receive housing compensation.

In an interview, Gerald A. Rosenberg, who was in charge of the state attorney general office's charities bureau until January, said the office was satisfied by MoMA's Jan. 5 filing on the trust payments. He said the bureau had originally raised questions because it was concerned about adequate disclosure.

When the museum files reports, Mr. Rosenberg said, "it has a duty to be truthful and complete." He added, "If there are any material omissions, that could mislead other institutions in comparable situations, as well as state and federal regulators and others relying on the data."

Marcus S. Owens, a lawyer who formerly headed the division of the Internal Revenue Service that oversees nonprofits, said he did not consider the recent filing to GuideStar adequate.

"They've essentially admitted to GuideStar that more compensation was paid than has been reported," Mr. Owens said. "Unless they filed an amended return with the I.R.S., though, they have a federal tax problem."

"It's too cute by half," he said, adding, "This is the sort of issue that often brings the I.R.S. or state regulators into a case, and then they use it as a can opener to get into other things."

William Josephson, Mr. Rosenberg's predecessor in the New York attorney general's office, examined the trust's tax forms at the request of The Times and said the trust might have violated laws governing grants to individuals, as well as various withholding requirements.

"I've never seen anything like it before in my life," said Mr. Josephson, who has practiced law relating to nonprofits for more than 40 years.

Payments from the trust stopped in 2004. That year, the I.R.S. alerted nonprofit groups of plans to expand the definition of "related parties" for the purposes of reporting compensation, which would have required the museum to include payments to Mr. Lowry from the trust.

Ms. Mitchell, the MoMA spokeswoman, said the museum's decision to stop using the trust to pay Mr. Lowry had been driven by a restructuring of his compensation, "not by any external factors."

Mr. Lowry, previously director of the Art Gallery of Ontario in Toronto, was a dark-horse candidate for the Museum of Modern Art job. The museum was contemplating a major expansion and needed a leader with fund-raising and administrative talents who also had the diplomatic skills to handle its unusually independent curators.

Several candidates turned the job down, according to reports at the time, and the museum then considered younger, less prominent candidates like Mr. Lowry. Ms. Gund and Mr. Rockefeller, respectively the museum's chairwoman and chairman emeritus, flew to Toronto to meet with him, according to a statement from Mr. Rockefeller read by his spokesman, Fraser P. Seitel, in response to questions from The Times.

"It seemed unlikely that we could attract him and his family with the normal MoMA compensation package," Mr. Rockefeller said in the statement. "Aggie and I were both determined to help, since we both wanted to make this happen, and we were guided by our own advisers to establish the trust as the most expeditious way of doing it."

Mr. Rockefeller, who is currently in Thailand, noted that in Mr. Lowry's 12-year tenure as director of the museum, he has presided over an expansion involving a major capital campaign and the complicated logistics of moving the museum to temporary quarters in Queens in 2002 and back again for its reopening in November 2004.

Speaking on behalf of Mr. Lauder and Ms. Gund, Mr. Seitel said they agreed with Mr. Rockefeller's statement and would offer no further comment. Laurance Rockefeller died in 2004.

In its tax forms, the trust states that its purpose is to support "charitable and fine arts organizations in the New York City metropolitan area," and that applications for such support could be made by "initial letter of inquiry."

Ms. Mitchell said that as far as the museum knew, it was the only organization to seek the trust's support, but she added that she could not speak on behalf of the trust. The Rockefeller Trust Company, which manages various trusts for the Rockefeller family and others, is the sole trustee of the New York Fine Arts Support Trust, the one that covered the extra compensation to Mr. Lowry. The company's general counsel, Yvette Garcia, said it could not comment on its clients.

Ms. Mitchell said the museum did not consider the money from the trust to be gifts to an individual, even though the trust's tax forms indicate that it directly paid Mr. Lowry and Gary Garrels, a MoMA curator from 2000 to 2005, and the trust describes those payments as "charitable contributions."

"The trust payments were not grants to individuals, but rather the trust responded to particular requests for support from the museum to pay expenses the museum was otherwise obligated to make," Ms.

Mitchell said in an e-mail message.

She said that payments by the trust to Mr. Lowry and Mr. Garrels had been "made at the request of and for the benefit of the museum" and thus violated no laws. (The trust paid Mr. Garrels $50,000 a year from 2000 through 2002.)

Mr. Owens, the former I.R.S. official, disagreed. "If the museum has the ability to say to the trust, 'Pay him this money for services rendered,' that clearly is compensation for providing services to the museum, and it should be on the museum's tax form and the museum should be providing him with a W-2," he said. "You can't have it both ways, that it isn't a grant by the trust and it isn't compensation by the museum."

In a telephone interview from Los Angeles, where he is now chief curator of the Hammer Museum, Mr. Garrels compared the supplemental payments to those used to sweeten the salary package of anyone asked to move to a city with a high cost of living. "It's kind of like the equivalent of a signing bonus," he said. "I think universities and other institutions do the same thing, although the specific mechanism may be different."

Mr. Garrels said the additional money he received from the trust helped him decide to move to New York from San Francisco in 2000. "I was very much concerned about the cost of living in New York," he said. "The payments from the trust just buttressed my overall financial situation so I felt more confident in making the move."

Mr. Garrels said he had paid taxes on the additional income.

For the last three years, Mr. Lowry has been the highest-paid museum executive in the country, according to data from MoMA's tax forms compiled by The Chronicle of Philanthropy. In the fiscal year that ended June 30, 2005, for instance, he received basic compensation of $590,051, a bonus of $285,250 and benefits of $403,682, a total of roughly $1.3 million.

Additionally, the museum covered $90,029 of his expenses, including $70,000 for housing. His counterpart at the Metropolitan Museum of Art, Philippe de Montebello, received $533,462 in basic compensation and $80,934 in benefits, a total of $614,396. The Metropolitan, which has twice the assets of MoMA, also covered $242,650 in expenses for him, including a housing allowance.