

## **The New Form 990 – What Board Members Need to Know**

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The IRS has recently released a new version of Form 990 for the 2008 filing year. The IRS's revision of the Form 990 was based on three guiding principles:

- Enhancing transparency – giving the IRS and the public a more detailed and accurate view of the organization
- Promoting compliance – allowing the IRS to efficiently assess non-compliance risks
- Burden minimization – reducing the compliance burden on filing organizations.

The IRS may have succeeded in accomplishing its first two goals but the new Form 990 will, in many cases, require a significant investment of time by most new Form 990 filers and their tax return preparers.

The new form represents a considerable departure from the structure and content of the “old” Form 990. The instructions, a final “draft” version of which was released on August 19, 2008, are extensive – over 300 pages long. For many organizations, the length and complexity of the new Form 990 will present a real challenge to those charged with completing the form properly. While the compliance burden to report financial information will be significantly increased, the numerous detailed questions regarding the organization's governance, management, and policies pose the real challenge for Board members and senior management. “Wrong” answers to some questions require explanations and could cause the organization to be viewed in an unfavorable light. Throughout the core form and schedules, additional information or explanations are required or encouraged to be provided on Schedule O (Supplemental Information to Form 990).

Addressing the new Form 990 and all its questions now is critical in managing an organization's potential exposure from the new form. While Board members need not be familiar with every question, an understanding of the new Form 990 and the questions on governance, management, and policies is a must. Set forth below are the highlights of the new Form 990 that we believe are most crucial to Board members and management of organizations that will be required to file the new form.

### Who Must File New Form 990?

Not all organizations will be required to file the new form. For 2008, those organizations that have gross receipts of less than \$1 million and assets less than \$2.5 million can file Form 990-EZ instead of the new Form 990. Form 990-EZ will be significantly easier to complete than the new Form 990; however, some of the new Form 990 schedules (Schedules A, B, C, E, G, L and N) may also be required to be completed by Form 990-EZ filers. The filing thresholds decrease in 2009 and again in 2010. For 2010 and beyond, organizations with gross receipts of less than \$200,000 and assets of less than

\$500,000 will still be eligible to file Form 990-EZ. All others will be required to file Form 990.

### Overview

The new Form 990 is not a “one size fits all” form. There is a core form consisting of eleven parts. Part I of the core form is important because it is the likely the first thing a reader of the Form 990 will see. It is a brief summary of the organization including the organization’s mission/activities, number of independent voting members of the governing body, number of volunteers, the amount of gross and net unrelated business income, total contributions and grants received, compensation and benefits paid, and professional fundraising expenses.

### Part IV – Checklist of Required Schedules

Form 990 Part IV has 37 detailed questions regarding the operations and activities of the organization. Part IV questions include whether the organization:

- Engaged in political or lobbying activities;
- Made grants to individuals or organizations outside/within the U.S.;
- Has tax-exempt bonds;
- Has made loans or grants to certain current or former officers, directors, trustees or key employees;
- Reported fundraising or gaming activity revenue greater than \$15,000;
- Paid professional fundraiser more than \$15,000; or
- Engaged in certain transactions with officers, directors, trustees or key employees or persons or entities related to these individuals.

Responses to these questions determine which of the additional sixteen schedules the organization must complete. Completing the additional schedules naturally entails providing more information. We recommend that Board members and management review all the questions on Part IV of the new Form 990 as a way to familiarize themselves with the nature of the questions on the new form.

### Part VI - Governance, Management, and Disclosure

Part VI requests detailed information about the organization’s policies. The IRS acknowledges that such policies are not required by the Internal Revenue Code but the IRS’s goal in asking appears to be to encourage good governance. The “wrong” response to certain questions may be viewed negatively by readers of the Form 990 and even the “correct” response can require a very detailed explanation. Part VI is divided into three sections: Section A – Governing Body and Management; Section B – Policies; and Section C – Disclosure.

Here is a sample of some of the Section A questions that can raise issues:

- Did any Officer, Director, Trustee or Key Employee (ODTK) have a family or business relationship with any other ODTK? If so, explain on Schedule O.
- Did the organization delegate management duties to a management company or other person? If so, explain on Schedule O.
- Does the organization have local chapter, branches or affiliates and, if so, does it have written policies governing the activities of such chapters?
- Did the organization contemporaneously document the meetings held or written actions undertaken by the governing body and any committees authorized to act on behalf of the governing body? If no, explain on Schedule O.
- Was a copy of the Form 990 (as ultimately filed with the IRS) provided to the governing body before it was filed? The instructions require that the organization describe in Schedule O the process by which any of the organization's officers, directors, trustees, board committee members, or management reviewed the prepared Form 990, whether before or after it was filed with the IRS, including specifics regarding who conducted the review, when they conducted it, and the extent of any such review.

Section B of Part VI requests information regarding the organization's conflict of interest, whistleblower, and document retention and destruction policies. This section also requires detailed information on how the organization determines compensation for its CEO, Executive Director and other officers and key employees. If the organization has entered into a joint venture with a taxable entity, Section B asks whether the organization has written policies or procedures to safeguard the organization's tax-exempt status.

Section C requests information on how the organization makes its Form 990 and other documents that are open to public inspection available to the public. It also requests whether other documents not required to be disclosed to the public (governing documents, conflict of interest policies, financial statements) are open to public inspection and, if so, how.

Part VII, Section A of Form 990 requires detailed compensation information for current and former ODTK and highest compensated (HC) employees. Based upon the amounts and types of compensation reported in Part VII, organizations may be required to file Schedule J, which requires even more detailed compensation information. Schedule J must be completed if an organization reports in Part VII, Section A: (i) payments to any former ODTK or HC (there are certain payment thresholds for inclusion in Section A); (ii) payments of total reportable compensation to an individual that exceeds \$150,000; or (iii) payments from an unrelated organization for services to this organization.

Schedule J – Compensation Information is one of the schedules outside the core Form 990 that is likely to receive a lot of attention. Organizations that complete Schedule J must indicate if it provides any of the several types of perquisites (perks) to those disclosed on Section A Part VII, including first class or charter travel, companion travel, tax gross-ups, housing allowances, and maid or chauffeur or other personal services. Schedule J also requires information on how the CEO/ Executive Director’s compensation was established and whether anyone listed in Section A received compensation contingent on the revenue or net earnings of the organization or any other organization. The compensation for each person listed in Schedule J must be categorized as broken out by compensation category – base, bonus and incentive, other, deferred and nontaxable benefits.

### Summary

The new Form 990 has and will continue to generate much discussion and commentary and the discussion above just scratches the surface in addressing all the information an organization might be required to supply. As a public document, the new Form 990 will provide the IRS, state attorneys general, donors and potential donors, charity watchdogs and the general public with an in-depth look at many aspects of a tax-exempt organization. It will also require a significant investment of time by a tax-exempt organization’s staff and/or its tax preparers to accurately complete the form and provide sufficient explanations where required or recommended. Board members and management must work with their organizations to assess reporting requirements with regard to the new form. Good governance policies and procedures should be evaluated in light of the new Form 990 questions and, where appropriate, changes made before the end of the organization’s filing year. This is particularly true in the compensation area where much attention will likely be focused.

Links to the new Form 990, draft instructions and related information is available on the IRS website at: <http://www.irs.gov/charities/article/0,,id=181089,00.html>

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