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# Understanding the IRS Form 990 for Executives

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## Background

The IRS released the redesigned Form 990 and instructions in December of 2008. The redesign and subsequent modifications and clarifications were based upon three guiding principles:

1. To enhance transparency
2. To promote compliance
3. To minimize the burden on filing organizations

## Introduction

- The Form 990 is required for all 501(a) organizations other than the following:
  - May File 990-EZ for:
    - 2010 and later years
    - If gross receipts are greater than \$50,000 and less than \$200,000
    - If assets are less than \$500,000
  - May File 990-N (e-postcard) for:
    - 2010 and later years
    - If gross receipts are less than \$50,000

## Introduction

Exceptions – The following organizations must file Form 990 and not Form 990-EZ or Form 990-N:

- Sponsoring organizations of donor-advised funds
- Hospitals
- Controlling organizations described in IRC 512(b)(13) if there are any transfers among the organizations
- IRC 509(a)(3) supporting organizations (can file 990 or 990-EZ, just not 990-N)

## Introduction

Special rules for Section 527 political organizations:

- Must file 990 or 990-EZ if it had \$25,000 or more in gross receipts during the tax year.
- A qualified state or local political organization must file Form 990 or 990-EZ only if it has gross receipts of \$100,000 or more.
- Political organizations are not required to file 990-N.

## Governance Focus

Organizations must document the existence of various policies and procedures throughout the Form 990. Organizations want to implement these policies/procedures before their year-end, if they have not already done so, in order to respond “yes” to these questions.

The following government bodies influenced the development of the Form 990:

- Congress and Attorneys General
- Panel on the Nonprofit Sector
- Various other organizations
- IRS

## Overview

Form 990 consists of an 12-page Core Form along with 16 supporting schedules. Not all schedules will need to be completed by most entities.

- The Core Form must be completed by all filing organizations and requires the reporting of an organization's exempt and other activities, finances, governance, compliance with certain federal tax filings and requirements, and compensation paid to certain persons.
- Additional schedules are required to be completed depending upon the activities and type of organization.

## Overview – Core Form

- Part I Summary
- Part II Signature Block
- Part III Statement of Program Service Accomplishments
- Part IV Checklist of Required Schedules
- Part V Statements Regarding Other IRS Filings and Tax Compliance
- Part VI Governance, Management, and Disclosure
- Part VII Compensation
- Part VIII Statement of Revenue
- Part IX Statement of Functional Expense
- Part X Balance Sheet
- Part XI Reconciliation of Net Assets
- Part XII Financial Statements and Reporting



# Overview – Supporting Schedules

There are 16 supporting schedules:

1. Schedule A Public Charity Status
2. Schedule B Contributions
3. Schedule C Political Campaign and Lobbying Activity
4. Schedule D Supplemental Financial Statement Detail
5. Schedule E Schools
6. Schedule F Foreign Activities
7. Schedule G Fund-Raising and Gaming
8. Schedule H Hospitals
9. Schedule I Grants

# Overview – Supporting Schedules

## Supporting schedules: (cont.)

- |                |  |
|----------------|--|
| 10. Schedule J | Compensation   |
| 11. Schedule K | Tax-Exempt Bonds   |
| 12. Schedule L | Transactions with Interested Persons                           |
| 13. Schedule M | Noncash contributions  |
| 14. Schedule N | Liquidation, Termination, or Significant Disposition of Assets |
| 15. Schedule O | Supplemental Information to Form 990                           |
| 16. Schedule R | Related Organizations  |

## Overview – Core Form

### Part VII – Compensation:

- Requires reporting for calendar year ending with or within the organization's tax year (it may differ from what is reported as wages in the functional expense statement if you are a FYE)
- Includes compensation from the reporting organization AND any related organizations
- W-2 (Box 1 or Box 5 whichever is larger) or Form 1099 (Box 7 )

# Overview – Core Form

Part VII – Compensation: (cont.)

- The following must be reported:
  - Current officers, directors, and trustees (no minimum compensation threshold), including top management and top financial positions
  - Current key employees (\$150,000)
  - Current five highest-compensated employees other than officers, directors, trustees, or listed key employees (\$100,000)
  - Former officers, key employees, and highest-compensated employees (\$100,000)
  - Former directors and trustees (\$10,000 in the capacity as a former director or trustee)
  - Top five independent contractors (\$100,000 or more)
  - The 990 also requires the TOTAL number of individuals and independent contractors paid over \$100,000 during the calendar year to be reported (above the 5 specific information is provided for).
- For these individuals W-2's are essential for accurate return preparation

# Overview – Core Form

## Part VII – Compensation: (cont.)

- Compensation from related organizations must be included
- Please note: Estimated average hours per week devoted to related organizations reported in Part VII, column B
- Definitions:
  - Officer includes officers of the board (as determined by the bylaws) and corporation:
  - Includes top management official and top financial official

# Overview – Core Form

## Part VII – Compensation: (cont.)

- Key employee:

- \$150,000 Test: Receives \$150,000 or more of reportable compensation from organization and all related entities.
- Responsibilities Test: Has powers over organization as a whole similar to an officer, director or trustee; manages a discrete segment of the organization representing 10% of the activities, assets, income or expenses; or determines 10% or more of the organization's expenditures.
- Top 20 Test: Is one of 20 top paid employees; other than officer, director or trustee and meets the above 2 tests.
  - Others of the top 20 may qualify among the 5 highest paid employees

# Overview – Supporting Schedules

## Schedule J – Compensation:

- This schedule must be completed for any individual that answered “yes” to the questions on Form 990, Part VII, 3 to 5:
  - Any former officer, key employee (see Core Form Part VII), or highest-compensated employee (over \$100,000)
  - Any former director or trustee (over \$10,000)
  - Any current officer, director, or key employee (over \$150,000 from the organization or related organization)
  - Any person who receives or accrues compensation from any unrelated source for services rendered to the organization

# Overview – Supporting Schedules

## Schedule J – Compensation: (cont.)

- Part I disclosures for all organizations – Did the organization provide:
  - First-class or charter travel
  - Travel for companions
  - Tax identification or gross-up payments
  - Discretionary spending accounts
  - Housing allowance or residence for personal use
  - Payments for business use of personal residence
  - Health or social club dues or initiation fees
  - Personal services such as a maid, chauffeur, or chef

Please note for each of the listed benefits above the organization must have a description in Part III of Schedule J describing the type of benefit provided, the listed person who received the benefit, and whether the benefit, or any part of it, was treated as taxable compensation to the listed person.



# Overview – Supporting Schedules

## Schedule J – Compensation: (cont.)

- Is there a written payment and reimbursement policy?
- Was substantiation provided prior to reimbursing or allowing expenses listed on the previous slide?
- How is the compensation for the CEO/Executive Director established?
- Severance payments
- Supplemental nonqualified retirement plans
- Equity-based compensation arrangements
  - Please note that if the organization does have listed persons receiving severance payments or participating in nonqualified retirement plans or equity-based compensation arrangements additional information needs to be provided in Part III of Schedule J.

# Overview – Supporting Schedules

## Schedule J – Compensation: (cont.)

- Additional questions for 501(c)(3) and 501(c)(4) organizations:
  - Any compensation contingent of revenue of the organization or any related organization
  - Compensation contingent upon the net earnings of the organization or any related organization
  - Any nonfixed payments
  - Any amounts subject to the initial contract exception
- Breakdown of W-2 compensation:
  - Base compensation
  - Bonus and incentive compensation
  - Other compensation

# Overview – Core Form

## Part VI – Governance, Management, and Disclosure:

- The IRS refers to this section of the Form 990 as its “crown jewel”
- There is no statutory authority to regulate governance; however, the IRS strongly believes that good governance and accountability will result in an organization’s assets being used in conjunction with its exempt purposes. The IRS has stated that answers to the governance questions will be considered with respect to selecting organizations for audit.
- Governance practices influence whether an organization is operated to further exempt purposes and whether the organization serves public, rather than private, interests.
- Note: All organizations must answer each question:
  - Most questions simply probe for best practices. However, by implication, “no” answers tend to paint a less than ideal picture of the organization. Schedule O provides organizations with the opportunity to provide additional explanations.
  - Now (or before the end of a fiscal year) is a good time to enact applicable best practices and policies so that organizations may answer “yes”

# Overview – Core Form

## Part VI – Governance, Management, and Disclosure: (cont.)

- Section A – Governing Body and Management:
  - Number of voting members
  - Number of independent voting members
  - Organizations should engage in reasonable effort to determine independence of board members.
  - Family and business relationship disclosures
  - Delegation of control to a management company
  - Significant changes to organizational documents
  - Material diversion of assets
  - Documentation of governing body and committee meetings

# Overview – Core Form

## Part VI – Governance, Management, and Disclosure: (cont.)

### ■ Section B – Policies (should be written):

- Was a FULL copy of Form 990 provided to the governing body before it was filed? Describe the process used to review Form 990.
- Conflict of interest policy
  - THIS IS AN IMPORTANT POLICY – The IRS is no longer issuing exempt letters if an organization does not have a policy in place.
- Whistleblower policy
- Document retention and destruction policy
- Rebuttable presumption for compensation
- Joint venture activities and procedures
  - Has your organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint ventures and protection of exempt status.

# Overview – Core Form

## Part VI – Governance, Management, and Disclosure: (cont.)

### ■ Schedule C – Disclosure

- Forms 1023 or 1024
- Form 990 and 990-T (501(c)(3))
- Organizing/governing documents
- Conflict of interest policy
- Financial statements

- Of the documents listed above only the disclosure of the exemption application and Form 990 & 990-T are mandatory for 501(c)(3) organizations unless the other items are included in the organization's exemption application or correspondence that is part of the exemption process.



## Specific Governance Practices and Policies

Where is the IRS headed?

- The gold standard should be an active, independent, and engaged Board of Directors overseeing the organization.
- Independent board members are important because they increase the likelihood that decisions will be made in the best interest of the organization and the community it serves.
- Board composition, internal controls, and governance structure will remain a large part of their focus going forward.

## Overview – Core Form

### Part III – Program Service Accomplishments:

- Description of the organization’s mission as adopted by the governing body
- New, changed, or discontinued activities
- Description of the top three program service accomplishments as measured by total expenses incurred.
  - Be as descriptive as possible in these explanations
  - Show off all the organization is doing
  - Show impact vs. results when possible



# Overview – Supporting Schedules

## Schedule A – Public Charity Status:

- Required to be completed by 501(c)(3) organizations:
  - Inquires as to the reason for public charity status
  - Requires a breakout of all public support, UBTI, investment income, and other revenue
  - Supporting organizations are asked whether the organization has received a determination from the IRS of its type
    - Please note in 2014 Schedule A substantially changed for supporting organizations.

# Overview – Supporting Schedules

## Schedule A – Public Charity Status: (cont.)

- Use same method of accounting as core form
- May indicate that the organization is publicly supported under either the IRC sections 509(a)(1) and 170(b)(1)(A)(vi) or the Section 509(a)(2) test
  - If the organization desires to change its public charity status with the IRS (in the Exempt Organization Database), it must request a new determination letter from the IRS

# Overview – Supporting Schedules

## Schedule A – Public Charity Status: (cont.)

- Part II for 170(b)(1)(A)(vi) organizations
  - Public support reduced by contributions from individuals, trusts or corporations
  - Reduction is in excess of 2% of support reported on line 11
- Part III for 509(a)(2) organizations
  - Public support reduced by all contributions or related revenue from disqualified persons
  - Public support also reduced by related revenue from non-disqualified persons in excess of the larger of \$5,000 or 1% of line 13

# Overview – Supporting Schedules

## Schedule L – Transactions with Interested Persons: Interested persons can include:

- Current or former officers, directors, trustees, key employees, and five highest-compensated employees listed on the Form 990, Part VII
- Persons who (five-year period) are in a position to exercise substantial influence
- Family members
- 35%-controlled entities (corporation, partnership, trust or estate)
- A donor or donor advisor to a donor advisor fund
- Disqualified persons (substantial contributors, foundation manager, owner of more than 20% of voting power of a corp., family members, 35% controlled entities)
- Reporting for scholarships and other assistance to interested persons and family members not required, if paid to member of charitable class intended to be served by organization or scholarships awarded on objective and non-discriminatory basis

# Activities Involving Interested Persons

Areas that require disclosure include:

- Excess benefit transactions – Excess of the economic benefit received from the applicable organization over the consideration given (including services) by disqualified persons.
- Loans to and from interested persons – Salary advances and other advances and receivables.
- Grants or assistance benefiting interested persons – Provision of goods, services, or use of facilities.
- Business transactions involving interested persons – Sales contracts, leases and licenses, performance of services, and joint ventures.

## Activities with Interested Persons

In general an organization must report business with transactions if:

- All payments during the tax year between the organization and the interested person exceeded \$100,000
- All payments during the tax year from a single transaction between the parties exceeded the greater of \$10,000 or 1% of the filing organization's total revenue for the tax year
- Compensation payments during the tax year by the organization to a family member of a current or former officer, director, trustee, or key employee listed in Part VII of Form 990 exceeded \$10,000
- In the case of a joint venture with an interested person, the organization has invested \$10,000 or more in the joint venture, whether or not during the tax year.

# Overview – Supporting Schedules

## Schedule R – Related Organizations:

- Requests information on each of the taxpayer's related disregarded entities, taxable entities, and tax-exempt entities
- Relationships include:
  - Parent – an organization that controls the filing organization
  - Subsidiary – an organization controlled by the filing organization
  - Brother/Sister – controlled by the same person or persons that control the filing organization
  - Supporting/supported
- NOTE: Disregarded entities are treated as related organizations (subsidiaries of the filing organization) for purposes of reporting in Schedule R, Part I, but not for purposes of reporting transactions with related organizations in Part V or otherwise in Form 990.

# Overview – Supporting Schedules

## Schedule R – Related Organizations: (cont)

### ■ Definition of control:

- Ownership of more than 50% of the stock by vote or value of a corporation
- Ownership of more than 50% of the profits or capital interest in partnership or LLC
- Ownership of more than 50% of the beneficial interests in a trust
- Being a managing partner or managing member in a partnership, limited partnership or a limited liability company with three or fewer managing partners or members
- Sole membership of a disregarded entity
- Controlling organization under section 512(b)(13) – substitute “more than 50%” for “at least 80%”
  - Transactions with 512(b)(13) controlled entities over \$50,000 must be reported on Part V of Schedule R and certain payments of interest, annuity, royalties and rent are automatically unrelated business income regardless of amount.



## Overview – Supporting Schedules

### Schedule R – Related Organizations: (cont)

- Control can also be indirect. For example, if the filing organization controls Entity A, which in turn controls Entity B (see above donation), the organization will be treated as controlling Entity B. The constructive ownership rules of IRC 318 will apply for purposes of determining constructive ownership of a corporation or other entity.



# Questions?

Thank you!

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