



## Exempt Organizations Summary & Comments regarding the New Form 990

The Internal Revenue Service has released a draft of the revised Form 990, annual tax return for non-profit organizations. The purpose of this letter is to provide you with a general understanding of the revisions, as well as prepare you for additional reporting and record keeping that may be required.

The new Form 990 is scheduled to take effect for fiscal years beginning in 2008. The redesign is based on two guiding principles – enhancing transparency and promoting tax compliance. A third purported guiding principle is to minimize the filing burden on the organizations; however, most professionals have concluded that the revised Form 990 will require significantly more time and expense to prepare. In addition, your organization will spend many more hours compiling the necessary information.

The revised Form 990 consists of 11 pages, which must be completed by all filers, and 16 schedules, which may apply according to the size, nature, and complexity of your organization. While many of the schedules will not likely apply to smaller and less complex organizations, larger and more complex organizations are likely to face significantly increased reporting requirements.

Nonprofits are required to disclose Form 990 to the public. Not only should the return be accurate, it should also reflect what your organization wants to communicate to the public. Form 990 is frequently requested by donors and grant-makers, and is increasingly available on the web. An accurate Form 990 is important for:

- Compliance – As stewards of the public’s money, you have a responsibility to report on your activities, including your finances.
- Public Accountability – Public trust and confidence are the foundations of the nonprofit sector. To keep this trust, you must show that you are accountable and responsible.
- Primary Source of Data – More frequently donors are evaluating the Form 990 before making a contribution.
- Policy Making – Accurate data will help policy makers develop the most effective ways to assist non-profit organizations.
- Public Relations – Form 990 is an opportunity to present your organization and its programs in the most accurate and positive way.

Starting at page one, a summary allows the reader to see your stated purpose, the size of your organization and broad financial information. This overview is followed by a detailed explanation of your program service accomplishments. The return becomes more narrowly focused with questions regarding your organization’s compensation, management, and governance policies; in other words, the technical and administrative aspects of carrying out your exempt purpose. Detailed financial information is at the end of the form, resulting in a concrete financial view of your organization.

Following are descriptions of significant changes to the revised Form 990.

## **An Executive Summary**

Page one of the Form 990 is now a summary page that briefly reports activities, governance, revenue, expenses, and net assets for the current and prior year. This page provides an excellent opportunity to present a quick view of the organization to an interested party, as well as a financial comparison of the current year with the previous tax periods.

The first line of the Form 990 is a brief description of the organization's mission and/or most significant activities. This description may now be used to highlight strengths of the organization and opportunities for potential contributors or volunteers. It may address why the organization exists, what it hopes to accomplish, who it intends to serve, what activities it will undertake, and where the organization will focus its efforts. *While the statement should be informative, it should be concise enough to fit on three lines.* A longer statement is permitted on an additional schedule at the end of the return.

The summary also includes disclosure of the total number of volunteers involved in the organization. You may estimate the number if necessary. This information indicates the size of your organization and amount of community involvement.

## **Governance, Management, and Disclosures**

Public concern regarding the governance and management of public companies following the failure of Enron, WorldCom and others led Congress to pass the Sarbanes-Oxley Act of 2002. The Act significantly increased the standards for accountability and responsibility for the individuals in positions of governance and management. Increased legislative oversight from Congress and by various states that have passed or considered Sarbanes-Oxley-type legislation has repeatedly raised new questions for nonprofit organizations to answer. Even though certain governance, management, and disclosure policies and procedures may not be required, the IRS considers such policies and procedures to generally improve tax compliance. Therefore, the IRS has included the following questions on the revised Form 990:

### **Governing Body and Management**

*Relationships among officers:* Do any officers, board members, or key employees have a family or business relationship with one another at any time during the organization's tax year? If so, the relationships must be disclosed.

*Documentation of meetings:* Did you document meetings and written action taken during the year by your governing body and committees with authority to act on behalf of the governing body? If not, explain any practices or policies regarding documentation of meetings and written actions of the governing body and committees with authority to act on its behalf. Documentation may include approved minutes, strings of e-mails or similar writings that explain the action taken, when it was taken, and who made the decision.

*Governing body review of Form 990:* Did your governing body review Form 990 before it was filed? Describe the process you use to review Form 990.

## **Policies**

*Conflicts of interest:* Do you have a conflict of interest policy and if so, are annual disclosures required? How is compliance monitored and enforced? A conflict of interest policy should define conflicts of interest, identify individuals subject to the policy, such as officers, directors, trustees, and highly compensated employees, and facilitate the disclosure of information that may help identify conflicts of interest. You should also disclose annually any actual or potential conflicts of interest, such as listing family members or substantial business or investment holdings. Also describe your practices for monitoring proposed or ongoing transactions for conflicts of interest and dealing with potential or actual conflicts. Include an explanation of which persons are covered, at what level you decide if a conflict exists, and at what level actual conflicts are reviewed. Also explain any restrictions imposed on persons with a conflict.

*Whistleblower Policy:* Do you have a whistleblower policy? As a result of Sarbanes-Oxley, you may be held criminally liable for retaliating against whistleblowers. A whistleblower policy should encourage staff and volunteers to report illegal practices or policy violations, free from individual retaliation and identify to whom the information should be reported.

*Document retention:* Do you have a document retention and destruction policy? A document retention and destruction policy identifies the responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records. The Sarbanes-Oxley legislation imposes criminal liability on tax-exempt and other organizations for destruction of records with the intent to obstruct a federal investigation. Also note that organizations are required to keep books and records relevant to its tax exemption and its filings with the IRS.

*Compensation Policy:* Do you have a process for determining compensation of the CEO, Executive Director, top management officials, and other officers or key employees? Describe the process. It is recommended that your compensation policy include a process of review and approval by a governing body, using comparable compensation data, and that the governing body documents the process regarding compensation arrangements.

*Joint Venture Policy:* Do you have a written policy to review investments or participation in joint ventures or affiliates and to safeguard exempt status? Examples of safe-guards include: maintaining sufficient control over the venture to ensure that the venture furthers the exempt purpose of your organization; requirements that the venture give priority to exempt purposes over maximizing profits for the other participants; that you not engage in activities that might jeopardize your exempt status; and that all contracts either benefit or are at least at arm's length to the organization.

*Audit committee:* Does the organization have a committee or persons that assume responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?

## **Disclosure**

*Public inspection policy:* Describe how Form 1023, Form 990 and Form 990T are made available to the public. These can be available through your own website, another's website, at your office, or

upon request. Form 1023 must be made available if filed after 1987. Form 990 must be made available for at least three years after the date the return is filed. Form 990-T, filed after August 17, 2006, must be made available for at least three years from the date the return is filed unless the return is filed solely to request a refund of telephone excise taxes.

Although not required, IRS now asks if you make governing documents, conflict of interest policy, and financial statements available to the public.

### **Detailed Transactions**

Pages three and four of Form 990 contain detailed questions regarding the organization's activities and transactions. If any of the answers are "yes," additional reporting is required on a supplemental schedule. If your organization engages in any of the following, we recommend that you discuss your situation with your accountant:

*Donor Advised Funds:* Did the organization maintain any donor advised funds or any accounts where donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? The organization must report contributions, grants, and aggregate value of the funds.

*Endowments:* Did the organization hold assets in term, permanent, or quasi-endowments at any time during the year? The organization must report detailed activity of the funds.

*Excess Benefit Transactions:* Did the organization engage in an excess benefit transaction with a disqualified person during the year? Generally, an excess benefit transaction is one in which the benefit received is greater than the consideration given. This can include loans, compensation, and grants. A disqualified person is anyone who has substantial influence over the affairs of the organization, such as officers and voting members, their families, or their controlled entities. These transactions must be corrected in order to avoid additional taxes up to 200% of the benefit.

### **Increased Compensation Reporting**

The number of reportable individuals has been broadened; however, thresholds for reportable compensation have been significantly increased. Reportable compensation includes compensation from the organization and related organizations for current positions, former positions, and independent contractors. Related organizations include parent, subsidiary, brother/sister entities, and supporting organizations. Compensation must be determined for the calendar year ending within the organization's regular taxable year. Reportable individuals may be determined on either a calendar or fiscal year basis depending on his/her position as detailed below. Compensation must include amounts reported on Form W-2, Box 5 Medicare Wages and Tips, and/or Form 1099-MISC, Box 7 Nonemployee Compensation. It also includes estimated amounts of other compensation, including deferred compensation and nontaxable benefits.

#### *Current Positions:*

A current officer, director, trustee, and key employee is one who participated at any time during the taxable year. They do not need to be in their position at year-end.

Report all current officers, directors, and trustees even if no compensation was paid. Officers, directors, and trustees should be determined based on the organization's regular taxable year.

Report current key employees with compensation greater than \$150,000. A key employee is anyone having responsibilities, powers, or influence similar to those of officers, directors, or trustees. In addition anyone who either manages 5% or more of the activities, assets, income, or expenses of the organization or has authority to control 5% or more of the organization's capital expenditures, operating budget, or compensation for employees should be listed. Key employees should be determined on a calendar year basis that ends within the organization's tax year.

Report the current five highest compensated employees other than officers, directors, trustees, or previously listed key employees with compensation greater than \$100,000. The five highest compensated employees should be determined on a calendar year basis that ends within the organization's tax year.

*Former Positions:*

Report former officers, key employees, and highest compensated employees with compensation greater than \$100,000. Former officers, key employees, and highest compensated employees are only those who were reported on any of the prior five tax returns.

Report former directors and trustees with compensation greater than \$10,000 for acting in the capacity as a former director or trustee. Compensation should be determined on a calendar year basis that ends within the organization's tax year.

*Independent Contractors:*

Report the current five highest compensated independent contractors with compensation greater than \$100,000. An independent contractor can be an individual or an organization. Payments may or may not be reported on Form 1099-MISC. Also report the total number of independent contractors who received compensation greater than \$100,000. This number should include the five highest compensated independent contractors previously listed.

While the revised Form 990 is in draft form and is not expected to be final until the end of this year, the published draft is a good indicator of what the final form will entail. You can view the 2008 draft on our website: [www.jrbt.com](http://www.jrbt.com). We recommend that you evaluate your organization's management, activities, and policies at this time in order to make any necessary changes before year-end. You should verify that existing policies are recorded and determine if new policies are needed. This may include obtaining board approval for processes in place or implementing new processes. In addition, you should begin planning and preparing for the increased reporting requirements by reviewing investments, compensation arrangements, board minutes, and prior year tax returns.

Because the tax return changes are significant, we will need to work closely together to ensure that any new issues or questions raised by the new form are addressed and that your organization's activities are properly reported. Please do not hesitate to call if you have any questions.

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