



**Big 990 Changes Require Advanced
Preparation for Non-Profits**

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What Is Form 990?

The IRS requires most tax-exempt organizations (as defined under IRS Code Section 501c) to file an annual tax return. This informational return is filed on IRS Form 990. Form 990 isn't new, but it has received quite a bit of attention and has been a topic of significant discussion among non-profit organizations during the last year.

Why? The IRS has made a massive overhaul of the form. *For non-profit organizations, understanding the new requirements, their implications, and how they will change the way you conduct business is critical to your tax-exempt status and support going forward.*

What's Changing?

Beginning with returns submitted in 2009, the reporting requirements of the new Form 990 will be much more comprehensive than the old form. What used to be a 9-page form with 2 schedules is now an 11-page form with 16 schedules. Form 990 questions now require, among other things, answers regarding your board's composition and degree of independence, the organization's governance and management structure as well as operational policies and procedures in place, information about how your programs work, and additional disclosure regarding executive compensation. In this new return, the IRS requires responses regarding if and how your organization promotes transparency and accountability to your members and/or constituents. A few of these questions include:

- Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other director, trustee, or key employee?
- Did the organization contemporaneously document the meetings held and written actions undertaken during the year by the governing body and each committee with authority to act on behalf of the governing body?
- Does the organization have a written conflict-of-interest policy? Does the

organization regularly and consistently monitor and enforce compliance with the policy? If so, how?

- Does the organization have a written whistleblower policy?
- Does the organization have a written document retention and destruction policy?
- Was a copy of Form 990 provided to the organization's governing body before it was filed? All organizations must describe the process, if any, the organization uses to review Form 990.

Why Is the Form Changing?

As noted on the IRS website, prior to this change Form 990 has not been significantly modified since 1979. Because of changes in the law and the increasing size, diversity, and complexity of tax-exempt organizations, the current form does not meet IRS tax compliance needs or the transparency and accountability needs of the states. In the past several years, the ethics and financial practices of several non-profit organizations across the country have come under fire. Executive compensation, investment transactions between non-profits and their boards, and executive and staff travel expenditures are some of the more significant red flags that have been raised.

The new questions are intended to increase transparency and compliance, especially in areas that have resulted in recent scandalous abuse. The additional questions are based on the principle that an organization with an independent governing body and well-defined management policies and operating practices is more likely to be compliant with tax laws than an organization without this structure.

What Do These Changes Mean to You?

The impact of these changes on your organization could be significant and far reaching. The new requirements aren't changes that will merely require more of your Accounting Department's time to complete the form each year. Indeed, completing the new 990 will require significantly more time *organization-wide*. For some non-profits, the additional time and effort completing the return is not the primary worry. Relative to the questions above and other 990 questions, some non-profits are wondering:

"What if an officer, director, trustee, or key employee does have a family relationship or a business relationship with another director, trustee, or key employee?"

"What if minutes were not taken at board or committee meetings?"

"What if we don't have a conflict-of-interest policy or can't demonstrate that we consistently monitor its compliance?"

"What if we don't have policies addressing some of the questions in the new 990?"

"What if we answer any of the questions unfavorably?"

Not having policies and procedures in place doesn't necessarily mean conclusions will be drawn that you are operating illegally. And answering any of the new questions unfavorably doesn't necessarily mean that you are opening yourself up to litigation.

However, recognizing that information in their returns is publicly accessible, non-profit organizations with a history of highly ethical operations are now realizing that although their policies and structure meet legal requirements, the answers to Form 990 questions will attract attention and the intense scrutiny of the public, organization members, potential donors, legislators, and various advocacy groups. A growing number of non-profits are reaching two important conclusions:

1. Organizational structure, management policies, and operating practices must be reviewed in light of the new Form 990.
2. How answers to questions are written and presented in the form will significantly impact public perception of the non-profit organization.

What Can You Do Now to Prepare?

Planning how to respond to the 990 questions now is crucial for societies and other non-profit associations to steer clear of public controversy and negative publicity. The first step in the planning process is to obtain from the IRS a copy of Form 990, all related schedules, and completion instructions. *Don't put this off.* Obtain and review these now while you have time to plan, write, review, and edit your responses.

Keep in mind that Form 990 is no longer just the staff accountant's worry. Given the nature of the new questions and possible implications, we recommend that the planning review process require the participation and engagement of several areas of the organization, including Board Members, the Executive Director, and representatives from the Accounting and Legal Departments.

During the review, give serious consideration to how you would respond to each question if you were required to answer today. Consider the potential implications of any unfavorable responses and plan how you would publicly address any concerns raised by the media or various advocacy groups that may question a statement in your return. Solicit assistance from knowledgeable external tax advisors, auditors, and legal counsel if adequate resources are not available internally.

Include your Public Relations staff in the review process. This is important for two reasons:

1. If the practices of your organization based on your 990 submission are questioned at some point, your PR department will be on the front lines of response. Understanding the vulnerabilities in the 990 response will arm your PR staff to begin planning reactions and response statements.
2. Once your 990 return is submitted, it will be viewed by the public. With this in mind, the new 990 offers your organization a tremendous opportunity—*Free Publicity!* Well-thought-out and well-written 990 responses could convey a poignant message and tell a powerful story about the success of your organization. Engaging your PR staff in the process early will enable your organization to take full advantage of this opportunity.

If after reviewing the questions, planning answers, and consulting with appropriate legal and tax advisors you determine additional policies are warranted or organizational structure changes are needed, consider whether these changes can be implemented in a timely manner by existing staff. If help is needed to write best practice SOPs or to modify the organizational structure, consider the use of consulting firms with significant experience in the non-profit sector.

In short, planning your response now will provide your organization the time needed to formulate the message you want to convey—a message that will garner public support and minimize risk to your organization.

Online Resources

For more information about Form 990, please visit www.irs.gov.

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