

The New Form 990: What it Means to You, Your Board, and Your Grantees

Grant Managers Network
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Featured Speakers

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Program Agenda

- **The Purpose of Form 990**
- **Basic Filing Requirements**
- **The New Form 990**
- **Governance Issues and Relevant Policies**
- **Planning and Positioning**



The Purpose of Form 990

- **“Information return” submitted to the IRS**
- **Provides comprehensive information about the organization**
- **Marketing tool**
- **Public document**
- **Can be used to satisfy state filing requirements**



Basic Filing Requirements



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Basic Filing Requirements

Who must file?

- Most organizations exempt from income tax under IRC Sec. 501 (a) must file Form 990, 990-EZ or 990-N (electronic postcard).

When?

- Due 15th day of the fifth month after the organization's accounting period ends.

Exceptions:

- Churches and affiliates
- Disregarded entities – Reg. Sec. 301.7701-1 to 3
- Certain government organizations
- Certain political organizations



Thresholds for Filing

Who must file Form 990?

- Organizations with gross receipts of \$1,000,000 or more or total assets \$2,500,000 or more at the end of the tax year.
- Gross Receipts – total amount of received from all sources during the year.
- Total Assets – amount reported on balance sheet at the end of the year.

Exceptions to thresholds:

- Sponsoring organizations of donor advised funds
- Controlling organizations described in Sec. 512(b)(13)
- Supporting organization described in Sec. 509(a)(3)



Electronic Filing Requirements

- Mandatory if the organization has \$10 million or more in total assets at the end of the tax year and files at least 250 “returns” during the year.
- Optional for all other organizations.
- Definition of “Returns” – includes Forms W-2’s, 1099’s, 941, etc.
- If an organization is required to file electronically but does not, the organization is considered not to have filed its tax return. Even if a paper return is submitted. Temp Reg. Sec. 310.6033-4T.
- Waiver – Notice 2005-88, 2005-48 I.R.B. 1060
- www.irs.gov/efile



Failure to File Penalties

- Sec. 6652(c)(1)(A) – Penalties for failure to file
 - Begin on due date of return
 - Reasonable cause
- \$20 per day not to exceed smaller of:
 - \$10,000 or
 - 5% of gross receipts for the year
- Large Organizations (annual gross receipts > \$1 million)
 - \$100 per day
 - Maximum of \$50,000 per return



Failure to File Penalties *(continued)*

- What constitutes organizations failure to file?
 - Not filing / Late filing
 - Filing incomplete tax return
 - Return contains incorrect information
- Penalties charged against responsible persons:
 - Organization must respond to IRS notice of failure to file.
 - Sec. 6652(c)(1)(B)(ii) - Individual charged penalty of \$10 per day with maximum of \$5,000.
- Penalties for willfully not filing or filing fraudulent returns:
 - Removal from publication 78
 - Penalties at the state level



Public Disclosure Requirements

- Sec. 6104 IRC – Information open for public inspection
- Exact copy of annual returns, applications for exemption, and other information required to be furnished under Sections 6033, 6034 and 6058.
- 3-year limitation on inspection of returns:
 - Information available in person or on internet
 - Reasonable Fee Charge (postage, copy charge permitted)
 - Penalties for non-compliance
- Exceptions from disclosure:
 - Schedule B – Schedule of contributors
 - Organizations not considered private foundations



The “New” Form 990



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The Revised Form 990

- On June 14, 2007, the IRS released redesigned Form 990.
- First major revision to Form 990 since 1979:
 - Old form failed to keep pace with changes in tax law
 - Failed to meet IRS compliance interests
 - Failed to meet needs of the states
- On December 19, 2007, the IRS released its final version.
- Organizations will begin using this form for the 2008 tax year (returns filed in 2009).
- Revised draft instructions released in August 2008.



IRS' Guiding Principles for Revision

- Enhancing Transparency
- Promoting Tax Compliance
- Minimizing Burden of the Reporting Organization



Enhanced Transparency

- IRS is using its statutory authority to require extensive reporting and disclosure by tax exempts.
- SEC-like disclosure document
 - Requests large amount of narrative and factual information about organizations' activities, operations and transactions with insiders.
 - For example, there are a substantial amount of narrative questions in Parts IV, V, and VI of the Redesigned Form 990 pertaining to organization's operations.



Promoting Tax Compliance

- Form promotes uniform and complete reporting of requested information.
- Form more closely tracks the organization's operations and use of assets.
- Form enables the IRS to more efficiently assess the organization's noncompliance with its tax exempt status.
- Form requests detailed information in areas perceived to have the highest potential for abuse.
 - i.e.: compensation and related party arrangements, private inurement, excess benefit transactions and non-cash gifts.



Minimizing Burden of Reporting Organization

- IRS contends that
 - the redesigned structure and flow of the questions and the use of formatted schedules will reduce the filing burden on most organizations.
- IRS acknowledges that
 - for many large organizations with complicated compensation arrangements, related entity structures and activities that raise compliance concerns there will be additional recordkeeping and preparation burden.



Redesigned Form 990



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Redesigned Form 990

Core Form 990

- 11 Pages subdivided into eleven reporting sections
- Highlights the Organizations:
 - Program activities
 - Revenue & expenses
 - Governance
 - Tax compliance
- Must be completed by all filing organizations



Redesigned Form 990

Schedules

- 16 Supplemental Schedules
- IRS is moving away from unstructured client designed schedules to promote comparability of reporting.
- Allows IRS to obtain more detailed information about certain types of organizations, i.e. hospitals and schools, and activities without burdening all organizations.



Form 990 – “CORE”



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Core Form 990 Overview

- Part I – Summary Page
- 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 - Corporate Governance, Management and Disclosure
- Part VII - Executive Compensation
- Part VIII - Statement of Revenue
- Part IX - Statement of Functional Expenses
- Part X - Balance Sheet
- Part XI - Financial Statements and Reporting



Parts I and II: Summary Page and Signature Block

Part I and Part II contain the following:

- Brief description of the organization's mission.
- Number of voting members of the governing body.
- Number of independent voting members of the governing body.
- Number of employees and volunteers.
- Total gross unrelated business income revenue and net unrelated business income reported on Form 990-T.



Parts I and II: Summary Page and Signature Block *(continued)*

Part I and Part II contain the following:

- Comparison of total revenue (contributions & grants, program services, investment income and other income) between the current year and prior year.
- Comparison of total expenses between the current year and prior year.
- Comparison of Net Assets or Fund Balance between the current year and prior year.
- Preparers must obtain PTIN, Form eliminates preparer's SSN.



Part III: Statement of Program Service Accomplishments

Part III contains the following:

- This section highlights the organizations' mission and program service accomplishments
- Description of exempt purpose achievements including expenses, grants and revenues associated with the three largest program services
- New questions related to significant changes (new activities or termination of an activity) not listed in prior returns
- Use Schedule O



Part IV: Checklist of Required Schedules

Part IV contains the following:

- Contains a total of 44 “YES” / “NO” type questions to help determine which required Form 990 schedules are to be completed by the organization.
- Intends to provide IRS with a snapshot of the organization’s activities and to guide the organization as to which schedules should be filed.



Part V: Statements Regarding Other IRS Filings and Tax Compliance

Part V contains the following:

- Similar to Part VI of current Form 990
- New questions regarding organization activities and filing of the following required forms:
 - Form 1096 – Independent Contractors
 - Form 1099 – Independent Contractors
 - Form W-2G – Gambling/Gaming Reporting
 - Form W-3 – Lists the total number of employees
 - Form 941 – Employment Tax Returns
 - Form 990-T – Unrelated Business Tax Reporting
 - TD F 90-22.1 – Foreign Bank Accounts
 - Form 8886-T – Tax Shelter Reporting for Tax Exempt Investors
- New questions regarding the use of donor advised funds.
- Non-cash contributions, i.e. intellectual property, boats, cars, etc.



Part VI: Governance, Management and Disclosure

- Questions are about policies not required by Internal Revenue Code.
- Required to be completed by all organizations.
- IRS developed a series of questions designed to emphasize corporate “best practices.”
- IRS considers such policies and procedures necessary to tax compliance.



Part VI:

Governance, Management and Disclosure (continued)

Section A: Governing Body and Management

- New definition of independent board member.
- Inquiries about family and business relationships with officers, directors etc.
- New question about delegation of controls over management.
- Describe governing body review and documentation process.
- Significant organizational changes / material diversion of assets.
- Questions regarding documentation and maintenance of board minutes of meetings of the governing body.
- Questions pertaining to local chapters, branches or affiliates and policies governing them.

Part VI: Governance, Management and Disclosure (continued)

Sections B & C: Policies and Disclosure

- Inquiry about a conflicts of interest policy and enforcement.
- New questions on existence of whistleblower / document destruction and retention policies.
- New questions regarding the process of determining compensation for CEO, top management officials and other key employees.
- Schedule O – describe compensation process.
- Questions regarding the organizations' investments in taxable entities and procedures to review policies of such relationships.
- Public inspection process / State reporting questions.



Part VII: Executive Compensation

- Continued IRS Focus
 - Potential area of abuse
 - 2004 IRS audit initiative
 - Good governance initiative
- Private Inurement / Private Benefit
 - Net earnings may not inure to a private individual
 - Compensation of disqualified person > FMV
- Intermediate Sanctions / Excess Benefit Transactions
 - Rebuttable presumption of reasonableness
- New Form 990
 - Greater amount of disclosure / transparency



Part VII:

Executive Compensation *(continued)*

- Expanded definition of who is an officer will greatly expand the number of executives reported.
- Reportable compensation is defined as Box 5 of Form W-2 (Medicare Wages) and must be reported on a calendar year basis.
- Compensation from related organizations must be reported in a separate column.
- Column for retirement benefits and health and welfare benefits.
- Additional information must be reported in Schedule J for certain individuals.



Part VII:

Executive Compensation - Section A

- All **current** officers, directors, trustees and key employees regardless of the amount of compensation.
- The organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who receive a reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099 – MISC) of more than \$100,000 from the organization and any related organization.
- All of the organization's **former** officers, key employees, or highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- All of the organization's **former** directors or trustees that received, in a capacity of a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.



Part VII: Executive Compensation - Section A *(continued)*

- The persons are to be listed in the following order:
 - individual trustees and directors,
 - institutional trustees,
 - officers,
 - key employees,
 - highest compensated employees, and
 - former such persons.

- Schedule A also requires:
 - the name and title of each person,
 - the average hours per week,
 - position in the organization,
 - reportable compensation from the organization, and
 - reportable compensation from related organizations.



Part VII: Executive Compensation - Section A *(continued)*

- A “yes” answer regarding any individual to any of several listed questions will direct the organization to Schedule J for such individual.
- Section B requires information regarding independent contractors.
- The five highest compensated independent contractors that received more than \$100,000 of compensation from the organization must be listed.
- The name and business of each such person, along with a description of services and a statement of the amount of compensation must be provided.



Form 990 - Schedules



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Form 990 Schedules - Overview

- Schedule A - Public Support Test
- Schedule B - Schedule of Contributors
- Schedule C - Political Campaign and Lobbying Activities
- Schedule D - Supplemental Financial Statements
- Schedule E - Educational Institutions
- Schedule F - Statement of Activities Outside the U.S.
- Schedule G - Fundraising Activities
- Schedule H - Hospitals
- Schedule I - Grants and Other Assistance
- Schedule J - Compensation Information
- Schedule K - Tax Exempt Bonds
- Schedule L - Transactions With Interested Persons
- Schedule M - Non-Cash Contributions
- Schedule O - Supplemental Information to Form 990
- Schedule R - Related Organizations



Fundraising



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Schedule G: Fundraising Activities

- Schedule must be completed if the organization reported more than \$15,000 from fundraising, special events or gaming activities on Form 990, Part IX.
- Organizations are required to list all states in which they are registered or licensed to solicit funds or conduct gaming activities in.
- Detailed schedules required for special events, fund raising and gaming activities including cash and non-cash prizes and other costs, including rent and facility costs.
- Schedule must also indicate whether the fundraiser has custody or control of the contributions and the amounts retained by the fundraiser and the organization.



Compensation



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Schedule J: Supplemental Compensation Information

Schedule J is required to be completed for any:

- **Current** officers, directors, key employees or five highest compensated employees if “reportable compensation” is greater than \$150,000.
- **Former** officers, key employees or highly compensated employees who received “reportable compensation” greater than \$100,000.
- **Former** directors or trustees receiving “reportable compensation” in excess of \$10,000.



Schedule J: Supplemental Compensation Information (continued)

Part I - Organizations must disclose information regarding any of the following benefits:

- First class or charter travel
- Travel for companions
- Tax indemnification 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
- Personal services (e.g. chauffeur or housekeeper)

Schedule J: Supplemental Compensation Information (continued)

- Organizations must disclose if there is an expense reimbursement policy has been established and if it requires substantiation prior to reimbursement.
- Organizations must answer detailed questions regarding the process and procedures used to establish the compensation of the CEO / Executive Director, including the existence of:
 - A compensation committee
 - An independent compensation consultant
 - A review of other organizations' Forms 990 – see GuideStar
 - Written employment contract
 - Compensation survey or study
 - Approval by the board of directors or the compensation committee



Schedule J: Supplemental Compensation Information (continued)

- Whether the organization provided severance payments, non-qualified deferred compensation or other equity based compensation.
- **Part II – Executives’ “reportable compensation” must be reported in five separate categories, including:**
 - Base compensation
 - Bonus and incentive compensation
 - Other compensation (tax gross-ups, etc.)
 - Deferred compensation
 - Nontaxable benefits
 - Organization must also indicate the amount of compensation that has already been reported on the Forms 990 in prior years as deferred compensation.
- **Part III allows for the provision of additional information, explanations or descriptions required for this Schedule.**



Interested Persons



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Schedule L: Transactions with Interested Persons

- Schedule required for certain transactions with interested persons.
- “Interested Persons” include officers, directors, trustees, key employees, certain other disqualified persons and highly compensated employees.
- Part I - Identify excess benefit transactions
- Part II - Identify loans to and/or from interested persons, including:
 - Purpose of the loan
 - Original principal amount
 - Balance due
 - In default?
 - Whether the loan was approved by the board of directors
 - Written agreement?



Schedule L: Transactions with Interested Persons (continued)

- Part III requires identification of any grants or assistance from the organization to an interested person or a person related to an interested person.
 - Includes identifying the individual's relationship with the organization and the amount and type of grant.
- Part IV requires identification of business transactions between the organization and an interested person or persons related to an interested person.
- The organization must describe the transaction, list the amount of the transaction and indicate whether there is a revenue sharing agreement (of the organization's revenues).
 - The organization must report any compensation paid to professional firms if any one of the firm's partners serves on the organization's board of directors.

Tax Exempt Bonds



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Schedule K: Tax Exempt Bonds

- Schedule required to be filed by organizations with outstanding tax-exempt obligations that were issued through a State or local government conduit agency after December 31, 2002 and that answered “yes” to question 24a of Form 990, Part IV.
- Part I is required for 2008.
- Parts II, III and IV are optional for 2008.



Schedule K:

Tax Exempt Bonds *(continued)*

- **Part I: Description of Obligations**
 - Compliance with Form 8038
 - Description of Purpose, Qualified 501(c)(3) Bonds
 - Defeasance

- **Part II: Use of Proceeds**
 - Definitions of “Proceeds” and “Gross Proceeds”
 - Allocation of Uses
 - Determination of Final Allocation
 - Record Retention

Schedule K: Tax Exempt Bonds *(continued)*

- **Part III: Private Business Use**
 - General description
 - Leases
 - Management contracts and safe harbors
 - Research agreements and safe harbors
 - Unrelated trades or businesses
 - Problem of yearly reporting

- **Part IV: Arbitrage Considerations**
 - Arbitrage defined
 - Rebate
 - Interest rate hedges
 - Guaranteed investment contracts



Supplemental Information



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Schedule O: Supplemental Information to Form 990

- Designed for organizations required to e-file.
- This schedule is to be used to provide additional information:
 - **Form 990, Part III:** Questions 2 (new program services), 3 (cease significant program service) and 4d (descriptions of other program services).
 - **Form 990, Part V:** Question 3b to provide explanation for not filing Form 990-T if UBI exceeds \$1,000.
 - **Form 990, Part VI:** Section A, all “yes” answers for questions 2-7 and “no” answers for questions 8 and 9b should be described in Schedule O.
 - **Form 990, Part VI:** Section B to describe monitoring and enforcement of Conflict of Interest Policy and the process used for determining compensation of the CEO and other officers of the organization.



Schedule O: Supplemental Information to Form 990 (continued)

- **Form 990, Part VI, Section C:** Description for making documents public.
 - **Form 990, Schedule K:** Description of assumptions regarding positions taken on Schedule K.
 - Reason for amended tax return.
 - Additional space for narrative questions in other parts of the Form 990.
- **Organization & Structure of Form:**
- Schedule O should be completed to answer the questions as they appear in the form and schedules.
 - Each response should contain a heading that clearly states the particular question being answered.



Governance Issues and Relevant Topics



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Components of IRS Good Corporate Governance

- Transparency
- Disclosure
- Internal controls
- Independence
- Accountability



IRS Good Governance Practices

- Mission
- Organizational documents
- Governing body
- Governance and management policies
 - Executive compensation
 - Conflicts of interest
 - Investments
 - Fundraising
 - Governing body minutes and records
 - Document retention and destruction
 - Code of ethics and whistleblower policy
- Financial statements and Form 990 Reporting



IRS Good Governance Practices *(continued)*

Executive Compensation

- Continued focus of IRS
- Reasonable compensation
- Cannot exceed FMV of services rendered
- Sec. 4958 - Rebuttable presumption for CEO, top management, and other officers and key employees
- Compensation committee
- Comparable data



IRS Good Governance Practices *(continued)*

Conflicts of Interest

- Officers, Directors, Trustee, Key Employee etc. act in the interest of the charity
- Sample conflict of interest policy contained in Form 1023
- Conflicts of Interest Policy
 - Is there a written policy?
 - Is annual disclosure of potential conflicts required?
 - Does the organization regularly monitor and enforce compliance?
 - Is policy enforced?



IRS Good Governance Practices *(continued)*

Investments

- Investment committee
- Maintaining minutes
- Adopt Investment Policy
 - Is there a written policy?
 - Does policy safeguard the organizations assets
 - Updated annually
 - Is policy enforced?
- Prudent investments, i.e.: joint ventures, etc.
- Does investment jeopardize exempt status?



IRS Good Governance Practices *(continued)*

Governing Body Minutes and Records

- Actions contemporaneously documented
- Board minutes



IRS Good Governance Practices *(continued)*

Ethics and Whistleblower Policies

- Code of Ethics
 - Adopt a written policy
 - Promote ethical standards for entire organization
 - Discourage certain behavior
 - Regularly monitor and enforce standards?
- Whistleblower Policy
 - Adopt a written policy
 - Policy for handling employee complaints
 - Establish procedures of reporting in confidence



Resources That Every Organization Should Have

Sources

- Form 990
- IRS Governance Document
- Nonprofit Panel Reports
- Principles for Good Governance and Ethical Practice: A guide for Charities and Foundations
 - Panel on the Nonprofit Sector October 2007
- Board Source
- Guidestar.org
- State Attorney General



Other Policies & Procedures to Consider



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Policies and Procedures Mentioned or Implied in the Redesigned Form 990

- **Policies and Procedures:**
 - Code of Ethics
 - Committee Charters
 - Investment Policy
 - Endowment Policy
 - Grant Making Policy
 - Policy on Minutes
 - Executive Compensation Policy
 - Fundraising Policy
 - Board Member Policy



Policies and Procedures *(continued)*

- Discussion of annual report
- Discussion of management letter comments
- Board approval of budget
- Board review of the Form 990
- Grant approval
- Board orientation
- Record retention and identification of responsible employees



Record Retention Compliance



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Record Retention Compliance

- Issuance
 - Closing transcript
 - Form 8038
- Post issuance
 - Arbitrage issues
 - Track investment returns
 - Choose accounting methods for expenditure of proceeds
 - Track expenditures



Record Retention Compliance *(continued)*

- Post issuance *(continued)*
 - Private activity
 - Track and monitor expenditures
 - Monitor use of financed facilities (leases, management contracts, etc.)
 - Future change in use

- Consult with bond counsel or corporation counsel



Planning and Positioning



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Preparing for the New Form 990

- Establish Form 990 Task Force
- Identify how many schedules the organization will need to complete.
- Process will be more burdensome to organizations with sophisticated compensation arrangements and related party transactions.
- Determine if the organization will need assistance or if current software will be sufficient.



Preparing for the New Form 990 *(continued)*

- Identify missing or outdated policies.
- Ensure narrative sections are accurate and positive.
- Compare / convert 2007 tax return to 2008 format.
- Maintain bond-related information.



Questions & Answers



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Contact Information

Thank you for attending today! Please contact us if you have any questions or if we can be of assistance to you and your organization.

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