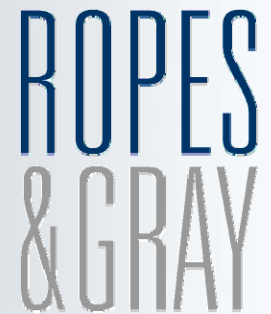


Revised IRS Form 990 Imposes Significant New Reporting Requirements

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What is the Form 990?

- Annual information return filed with IRS
 - Principal way IRS gathers information about tax-exempt organizations
 - Collects financial, programmatic, compensation information
- Not a “tax” return – no tax due
 - Separate form (990-T) used to report taxable income
 - 990-T must be made available to public for returns filed after 8/17/06
- Publicly available – relied on by media, state regulators, donors
 - www.guidestar.org

New Form 990 – Significant Revision

- Released December 2007
 - First significant revision since 1979
- Draft form released in June 2007 received over 3,000 pages of comments
- Major organizational change
 - 2007 form: 9 pages with 2 schedules
 - 2008 form: 11-page “core form” with 16 schedules

Form 990's 16 Schedules

- A. Public charity status and public support
- B. Schedule of contributors
- C. Political campaign and lobbying activities
- D. Supplemental financial statements
- E. Schools
- F. Activities outside the U.S.**
- G. Fundraising or gaming activities
- H. Hospitals**
- I. Grants and other assistance to organizations, governments and individuals in the U.S.
- J. Compensation
- K. Tax-exempt bonds**
- L. Transactions with interested persons
- M. Non-cash contributions**
- N. Liquidation, termination, dissolution or significant disposition of assets
- O. Supplemental information
- R. Related organizations and unrelated partnerships

Bold = Significant amounts of new information requested

IRS Stated Reasons for Change

- Increased transparency
 - More disclosure, more detail
- Tax compliance
 - Better enforcement tool
- Minimize burden on filing organization
 - Clearer, more organized questions
(but many more of them)

New form reflects particular IRS interest in
governance, conflicts of interest and
compensation

When Will We File the New Form?

- Effective for tax years beginning in 2008
 - Most fiscal year organizations will first file in 2010
 - Certain schedules to be phased in
- Phase in for smaller organizations
 - Change in filing thresholds for Form 990EZ
 - From <2.5MM in assets and <1MM in gross receipts for 2008 down to <500K in assets and <200K in gross receipts for 2010 and beyond
- Instructions
 - To be released in spring 2008; certain schedules may be sooner

Highlights of New Form 990

- Summary page
 - First page of 990 provides snapshot: mission and basic financial information (revenue, expenses, assets, liabilities)
 - Controversial percentages and ratios in discussion draft eliminated (e.g., officer, director and key employee compensation as percentage of total compensation)
- Governance and conflicts of interest (Core form and Schedule L)
- Compensation reporting (Core form and Schedule J)
- Endowment funds (Schedule D)
- Political and lobbying activities (Schedule C)
- Schools (Schedule E)
- Activities outside the U.S. (Schedule F)
- Related organizations and unrelated partnerships (Schedule R)
- Non-cash contributions (Schedule M)
- Hospitals (Schedule H)
- Tax-exempt bonds (Schedule K)

Governance and Conflicts of Interest

- Context
 - IRS draft good governance best practices (2007)
 - Panel on the Nonprofit Sector principles for good governance (2007)
- Core form
 - Details about governing body (number, documentation of meetings, approval of decisions)
 - Disclosure of family and business relationships among officers, trustees, key employees
 - Existence of policies: conflict of interest; whistleblower; document retention; joint ventures
 - Description of process used to review 990
- Governance questions reflect IRS view of best practices – “No” answers appear undesirable
 - Example: Are officers, directors or trustees, or key employees required to disclose annually interests that could give rise to conflicts?

Governance and Conflicts of Interest

- Schedule L consolidates reporting of transactions with “interested persons” (officers, trustees, key and highly compensated employees, substantial contributors):
 - Loans to and from interested persons
 - Grants or assistance benefiting interested persons
 - Business transactions involving interested persons
 - “Excess benefit transactions” – paying more than fair market value or reasonable compensation
- Instructions will be key to determining required Schedule L reporting (e.g., dollar thresholds)

Compensation

- Context
 - IRS executive compensation compliance initiative (2004)
 - Compensation controversies: American University, Getty Trust, Smithsonian
- Core form asks for description of compensation-setting process for top management
 - IRS seeking compliance with “intermediate sanctions” rules (rebuttable presumption of reasonableness)
- Compensation must be reported on core form for:
 - Current officers, trustees, key employees, and top 5 other employees who received >100K (“highest compensated employees”)
 - Former officers, key employees, and highest compensated employees who received >100K
 - Former trustees who received >10K (in that capacity)
 - Five most highly paid independent contractors (>100K)

Compensation

- Compensation from related organizations is included to determine reporting thresholds
 - Instructions will be key to determining relationships
 - Discussion draft listed parent, subsidiary, brother/sister, and supported/supporting organizations as related
 - Control: >50% ownership
- W-2 or 1099 compensation reporting required (calendar year)
 - IRS rejected comments by fiscal year organizations

Compensation

- Schedule J
 - Report further compensation details for anyone listed on core form who received more than 150K plus any former officer, trustee, key employee, highest compensated employee listed on core form
 - Breakdown required:
 - Base salary; bonus; other compensation; nontaxable benefits
 - Deferred compensation
 - Note: includes amounts earned, accrued in, or attributable to, one year and deferred to a future year, regardless of whether funded, vested, or subject to substantial risk of forfeiture
 - According to June 2007 instructions, earnings accrued on deferred amounts and increases in actuarial value must be reported
 - Reporting of *de minimis* fringe benefits and nontaxable expense reimbursements (required in discussion draft) eliminated

Compensation

- Pointed questions about benefits the IRS regards as questionable (although some may be defensible)
 - First class and companion travel
 - Housing allowances and residences for personal use
 - Club dues
 - Personal chefs, maids, chauffeurs
 - Tax indemnifications and gross-up payments
 - Discretionary spending accounts
- Asks how CEO's compensation is established
 - Compensation committee, independent consultant, compensation survey, etc.

Endowment Funds

- Context
 - Senate Finance Committee hearings focused on endowment payout rates (2007)
 - Letter to 136 colleges and universities with endowments >500MM requesting information about tuition costs and endowment payout, spending restrictions, costs, etc. (January 2008)
- For organizations with endowment funds, Schedule D (Supplemental Financial Statements) requests information about:
 - Beginning and end-of-year balances
 - Percentages held in permanent, term, quasi-endowment
 - Investments earnings and losses
 - Disbursements for: grants and scholarships; facilities and programs
 - Administrative expenses
 - Endowment funds held and administered by others
 - “Intended uses” of endowment funds

Political and Lobbying Activities/ Schools

- New questions about political campaign activities on Schedule C
 - Description; expenditures; volunteer hours
 - Questions about lobbying activities consistent with old Form 990
- Schedule E (Schools) replaces “Private School Questionnaire” on old Form 990
 - No new questions

Non-U.S. Activities

- Complete Schedule F if:
 - Revenues or expenses of >10K from non-U.S. activities (grants, fundraising, business, programs)
 - Grants or assistance of >5K to non-U.S. organizations or individuals
- Reporting on regional, not country-by-country, basis
- Activities: number of offices and employees/agents; type of activity
- Grants: purpose; amount; how disbursed; describe non-cash assistance
- Explain procedures for monitoring use of grant funds outside the U.S.
 - Treasury Department Anti-Terrorist Financing Guidelines

Related Organizations and Unrelated Partnerships

- Schedule R collects information about disregarded entities, “related” tax-exempt organizations and corporations, trusts, partnerships
 - Primary activity; domicile; share of total income; share of assets
 - Partnership reporting: unrelated business income; disproportionate allocations
 - Transactions with related organizations (gifts, grants, loans, sales, purchases, leases, employee sharing, reimbursements) – 50K threshold
- Unrelated partnerships (50% or less control)
 - List partnerships through which organization conducts more than 5% of its activities (assets or revenue), if partnership is not a “related organization”
 - Primary activity; domicile; tax status of other partners; share of assets; disproportionate allocations; unrelated business income
 - Exclusion for certain investment partnerships
 - Instructions to clarify
- Significant new reporting obligation for large, complex organization

Non-Cash Contributions

- Context
 - Senate Finance Committee hearings on valuation of non-cash contributions (2005)
 - Recently enacted tighter rules for donations of cars, intellectual property, other types of non-cash contributions
- Schedule M requires reporting of aggregate contributions in 24 categories
 - Examples: boats and planes; IP; commercial real estate; fractional interests in art
 - State revenue reported and method of determining revenue
- Asks about:
 - Gift acceptance policy for non-standard contributions
 - Use of 3rd parties to solicit, process or sell non-cash contributions
 - Any obligation to hold property for 3 years that is not required to be used for exempt purposes

Hospitals

- Phase in: Schedule H for 2008 requires only descriptive information about facilities; all questions must be answered on 2009 form
- What is a “hospital” for Schedule H purposes?
 - IRS stated intent: facilities licensed or certified as hospitals under state law (including facilities operated by organizations with a primary purpose other than promoting health, e.g., universities)
 - IRS still considering other categories
- For first time, required to report community benefit activities
 - Adopts Catholic Health Association reporting model: charity care; means-tested government programs; research; training; education
 - Medicare shortfalls and bad debt expenses are not to be reported in community benefit table (contrary to American Hospital Association view) – reported separately on Schedule H
- Also required:
 - Community-building activities
 - Joint ventures and management companies where hospital is partner or shareholder and officers, employees or physicians hold 10% interest in the aggregate

Tax-exempt bonds

- Phase in: 2008 form requires only identifying information about bond issues; all questions must be answered on 2009 form
- New Schedule K requires significantly more detail than current Form 990
- Reporting required only for bonds issued after 2002; 100K issue threshold
- Reporting required in four areas:
 1. General information
 2. Specific uses of proceeds of each issue
 3. Arbitrage-related matters
 4. Private use
 - Was property financed by the issue subject to certain types of private use?
 - Specific questions about leases, management or service contracts, research agreements (Rev. Proc. 2007-47)
 - Is bond or outside counsel routinely engaged to review contracts and agreements relating to the financed property?
 - Percentage of bond-financed property subject to private use, broken down between unrelated business taxable income (UBTI) and other types of private use
- Private use questions will require looking beyond bond transcript or other basic records

Wrap up

- Revised Form 990 reporting requirements:
 - May require new systems to collect information
 - Data collection by media and others more straightforward
- Form 990 easily obtained by media and others
- Important to be aware of information reported about your organization that will be in the public domain once filed

Teleconference Survey

Thank you for participating in our February 13, 2008, Universities & Colleges Practice teleconference program *Revised IRS Form 990 Imposes Significant New Reporting Requirements*. Please complete and return this feedback form by fax or email (or regular mail) so we can ensure the delivery of quality programs. Alternatively, we will be sending out a link and you can answer the survey online at that time.

Please return this survey to Amy Holley:

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Thank you for your participation.

Teleconference Survey

1. Please rate the teleconference in the following areas, where “1” is unsatisfactory and “5” is excellent.

Program Content	1	2	3	4	5
Quality of Instruction	1	2	3	4	5
Written Materials	1	2	3	4	5
Effectiveness of Technology	1	2	3	4	5
Usefulness	1	2	3	4	5

2. Did the teleconference provide you with sufficient opportunities to ask any questions you may have had?

(a) Yes (b) No (c) Not Sure

3. What can we do to improve your overall experience with our teleconferences?

4. Are there specific topics you would like to see us address in the future? If so, please describe below.

Teleconference Survey *continued*

5. Would you like one of our attorneys to follow-up with you about a specific question you may have?
(a) Yes (b) No

6. If you answered “Yes” to the previous question, please use the space below to write your question. Be sure to include your name, company name, phone number and e-mail address so that we can respond to you.
