

Get Ready for the New Form 990

Over the past few years, exempt organizations have undergone increased scrutiny by the IRS. In the interest of “transparency,” Form 990, which is filed annually by public charities, has been substantially modified for 2008 to ask questions that reflect what the IRS views as “best practices,” and to ask questions in areas, such as governance, in which no inquiry had been previously made. Even though the IRS realizes that a “no” answer does not indicate that the organization is violating any law, the fact that Form 990 is easily accessible by the public means that your organization may wish to alter its practices to adopt procedures that enable you to answer in a positive manner. These new questions include the following:

- Does the organization have a written conflicts of interest policy? If yes, does the organization regularly and consistently monitor and enforce compliance?
- Does the organization have a written whistleblower policy?
- Does the organization have a written document retention and distribution policy?
- Did the process for determining compensation of key officers and employees include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?
- Was a copy of Form 990 provided to the organization’s governing body before it was filed? Describe the process, if any, the organization uses to review the Form 990.
- How many voting members of the board are independent?

Pepper Note: Asking about governance matters is controversial and questions have been raised about whether inquiry into the 990 review procedure is properly within the IRS’s purview.

- Did the organization provide any of the following for its current officers, directors or any key employees:
 - first-class or charter travel
 - travel for companions

- discretionary spending account
- housing allowance or residence for personal use
- payments for business use of personal residence, health or social club dues or initiation fees?

If yes, did the organization follow a written policy regarding payment or reimbursement of these expenses? If no, explain.

Did the organization require substantiation prior to reimbursing such expense?

- During the year, did any person who is a current or former officer, director trustee or key employee:
 - Have a direct or indirect business relationship with the organization?
 - Have a family member who had a direct or indirect business relationship with the organization?
 - Serve as an officer, director, trustee, key employee, partner, or member of an entity or shareholder of a professional corporation doing business with the organization?
 - If so, list the interested person, the relationship between the interested person and the organization, the amount of the transaction and a description of the transaction.

Pepper Note: This is another controversial area. The definition of “business relationship” on the recently released draft instructions includes employment relationships, business arrangements, common ownership of business entities, and board service on the same business entity.

- Indicate what, if any, of the following the organization uses to establish the compensation of the organization’s CEO/Executive Director:
 - compensation committee
 - independent compensation consultant
 - Form 990 of other organizations

- written employment contract
 - compensation survey or study
 - approval by the board or compensation committee.
- Did the organization invest in or participate in a joint venture arrangement with a taxable entity? “Joint venture” is defined in the draft instructions as not only partnerships but also associations taxable as corporations. Information about the purpose of the activity must be provided.
 - Has the organization adopted a written policy to evaluate its participation in joint venture arrangements and taken steps to “safeguard” the entity’s exempt status under such arrangements?

Pepper Take-Away

Public charities should prepare now for the 2008 Form 990. They may wish to adopt policies and procedures that will enable them to answer questions in a favorable manner.

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