

THE UPDATE

QUICK LEGAL AND NON-PROFIT NEWS FROM THE LAW FIRM FOR NON-PROFITS®

The New IRS Form 990 - Part 1

Dear Nonprofit Colleague,

As you may know, the IRS has radically changed Form 990, the annual information tax return for nonprofit organizations. The new 990 is such a departure from the current form that we will send out several short newsletters between now and the end of 2008 to highlight key changes and new reporting requirements, and how they will affect your organization.

This first issue in the series is an introduction to the new form. It addresses the following:

- [The Concept Behind the New Form 990.](#)
- [Which Organizations Must File the New Form 990.](#)
- [The Structure of the New Form 990.](#)

Future issues, which are scheduled to come out biweekly between now and the end of the year, will address reporting requirements on:

- Program services and accomplishments.
- Substantial changes in programs and operations.
- Compliance with IRS filing and reporting requirements.
- Governance, management and public disclosures.
- Revamped public support test rules and Support Schedules.
- Compensation of nonprofit insiders.
- Fundraising and gaming (e.g., bingo, raffles and casino nights) activities.
- International activity and programs.
- Grant making.

As we are attorneys, not C.P.A.'s, this series of newsletters will not address the significant financial reporting and accounting changes required by the new Form 990. To learn more about these we recommend that you consult with your organization's tax advisor or a tax accountant who is well-versed in the tax rules that apply to nonprofit organizations.

[A link](#) to the new form and instructions is found at the [bottom](#) of this newsletter.

The Concept Behind the New Form 990

The new IRS Form 990 is almost a complete rewrite of the form. In addition to financial reporting, the

new form is designed to elicit substantial information to help improve the accountability and transparency of nonprofits. It has probing questions about operations, governance, programs and other topics that require detailed narrative answers. While the IRS does not have the legal authority to enforce good governance practices, it is, in effect, trying to enforce good nonprofit governance practices through public disclosure. (Remember that your Form 990 is a public document that anyone can download from guidestar.org and other websites, and that organizations must provide on request.) Undoubtedly, some "wrong" answers to certain questions will be more likely to trigger an IRS audit.

Which Organizations Must File the New Form 990?

Smaller nonprofit organizations may still file Form 990-EZ instead of Form 990. Indeed, because of the hardships the new Form 990 may impose, the IRS has temporarily raised the thresholds below which an organization may file Form 990-EZ instead of Form 990. The table below shows which organizations are eligible to file Form 990-EZ (and Form 990-N, the electronic postcard, for very small organization) for tax years beginning in 2008. (Note that sponsoring organizations of donor-advised funds and "controlling organizations" as defined in the Internal Revenue Code must file Form 990 regardless, and private foundations must file Form 990-PF.)

Tax Year	Threshold to File Form . . .	
	990-N	990-EZ
2008	Gross receipts normally \leq \$25,000	Gross receipts \leq \$1 million & Total assets $<$ \$2.5 million
2009	Gross receipts normally \leq \$25,000	Gross receipts \leq \$500,000 & Total assets $<$ \$1.25 million
2010 and After	Gross receipts normally \leq \$50,000	Gross receipts \leq \$200,000 & Total assets $<$ \$500,000 million

The Structure of the New Form

The new Form 990 consists of a core form plus sixteen separate schedules. The core form has eleven sections that ask additional information and are in a different order than the old form. For example, the signature page is now on page 1 instead of page 9. The amount of information required is much greater and attention to detail is more critical than ever. Failure to answer a question or an incomplete answer means that the return, even if filed when due, is incomplete and not deemed timely filed. Among other problems, this means that the statute of limitations will not begin to run until the return is rendered "complete."

Each 501(c)(3) filer of Form 990 will have to include at least some of the sixteen schedules. Many require extensive information about operations, boards, compensation, foreign programs, and grant making, among other topics. Filers of Form 990-EZ also be required to be file some of the new schedules.

Conclusion and Download Links

The new Form 990 will require substantially more information and be subject to greater scrutiny than has ever before been required of most nonprofits. The extra work will require much more time for information accumulation, form preparation and review. Accountants we have surveyed tell us that client data will need to be in their hands up to three full months before the filing deadline. Many also plan to recommend to their clients that they have their attorneys review the narrative and non-financial portions of the return. For our part, we will likely request that drafts be forwarded to us for review at least six weeks before the filing deadline.

It behooves every nonprofit to plan for these changes now, even if their 2008 tax return will not be due until late in 2009. For example, many will need to enhance or upgrade their accounting systems. Fortunately, the IRS is giving a break to medium sized nonprofits so that they can ease their transition to the new 990. Even these organizations would be wise to prepare for the new form now so that they will be ready when required to file it.

In two weeks we will discuss the new form's reporting requirements on program services and accomplishments.

To download the new Form 990, schedules and instructions, [visit the IRS website by clicking here](#).

If you know others who would find this information useful, please forward this newsletter to them.

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The Law Firm for Non-Profits, P.C. advises charitable and other nonprofit organizations, their boards and donors on matters involving tax exemption, joint ventures, self-dealing, organizational change, governance, IRS and Attorney General investigations, and as offsite general counsel.

THE UPDATE

QUICK LEGAL AND NON-PROFIT NEWS FROM THE LAW FIRM FOR NON-PROFITS®

The New IRS Form 990 - Part 2

Dear Nonprofit Colleague,

In [the last issue](#) of The Update, we introduced you to the new IRS Form 990. This is the first major revision of the basic tax return form for nonprofits in three decades. Organizations that do not qualify for Form 990-EZ or 990-N (explained in our last issue) must use this form for tax years beginning on or after January 1, 2008.

With this issue of The Update we commence our tour of the form and many of its schedules. Before the end of the year, when this series completes, you will know what's in store when you prepare or review the new Form 990 for your organization. Today we will briefly run through the core form's various parts giving special attention to Part III, the Statement of Program Accomplishments. You can jump to any part of the newsletter by clicking the appropriate link:

- [Parts of the Core Form](#)
- [Statement of Program Service Accomplishments](#)
- [Checklist of Required Schedules](#)
- [Statements Regarding Other IRS Filings and Tax Compliance](#)
- [Financial Statements](#)
- [What's Next](#)
-

[Links](#)

Before we start the tour, do not forget that every 501(c)(3) organization's Form 990, 990-EZ or 990-PF is now downloadable on the Internet from websites such as www.guidestar.org. This means that anyone who desires - funders, employees, critics, board members, enemies, journalists - has easy access to the information you report. Thus, it is important that an organization's Form 990 be carefully *crafted* and reviewed before it is filed.

The new Form 990 requires the reporting of much more information, and with greater detail, than the old form. But it also gives you (assuming you are part of the team that will prepare your organization's Form 990) the opportunity to tell the organization's story. That is, it puts the organization in control of its message. Indeed, to a great degree, the new Form 990 is designed to give each nonprofit the opportunity to paint its own picture and to describe the personality of the organization.

Parts of the Core Form

The form itself (without any of its 16 schedules) is called the "core form" by the IRS. [Download it here](#) from the IRS web site. It consists of 11 numbered parts. You also can download detailed [instructions](#) and a [glossary](#) of the myriad terms that have special definitions.

Part I, on page 1, starts by asking for a brief description of "the organization's mission or most significant activities." Bullet-point summaries of basic governance and financial information follow. Part II, also on page 1, is the signature block.

Statement of Program Services and Accomplishments

Part III is the Statement of Program Services and Accomplishments. Here you can relate the organization's mission statement and must list the achievements of its three largest program services (in terms of expenses) that furthered its exempt purposes. (Note that fundraising events generally are *not* considered program activities.) These are described on lines 4a, 4b and 4c. Additional program services and accomplishment may be described on the new Schedule O to Form 990.

At the top of each line you are asked for a "Code," "Expenses" and "Revenue." "Code" is to be left blank in 2008. For "Expenses," enter the total of all expenses incurred with regard to that program service. You are also asked to break out the amount of grants the organization made that are included in those expenses. "Revenue" means money earned by the organization in carrying out the program service (e.g., ticket sales, fees for service, etc.) but not grants the organization received in support of it. These are reported elsewhere on Form 990.

As you probably know, every nonprofit is required to notify the IRS of significant changes in its programs. By checking boxes 2 and 3 of Part III and describing such changes in Schedule O, your organization can easily satisfy this obligation.

Checklist of Required Schedules

Part IV is a two page list of more than 40 specific questions. "Yes" answers indicate that a particular Schedule to Form 990 is required. The questions must be read carefully. Failure to include a required Schedule will mean that the organization's Form 990 is incomplete and that it may be more likely to be subject it to an IRS audit. It may be helpful to keep the [Glossary](#) at hand when answering these questions.

Statements Regarding Other IRS Filings and Tax Compliance

Like Part IV, Part V requires careful reading. It identifies additional IRS forms that an organization must file and other IRS compliance requirements.

This Part should be reviewed periodically throughout the year as a planning tool. You may even want to download and look at it now. Preliminary "yes" answers can help an organization identify problem areas that it may be able to proactively address and correct before having to disclose them on Form 990.

Financial Statements

As with the old form, the organization's Income Statement is broken into two parts. Parts VIII is the organization's Statement of Revenue and Part IX is its Statement of Functional Expenses. Part X is the Balance Sheet. The core form concludes with Part XI, titled Financial Statements and Reporting. Here you report the organization's accounting method (cash or accrual), whether its financial statements were compiled, reviewed or audited by an independent accountant, whether there is an audit or similar committee, and similar questions.

What's Next

You will notice that we skipped Parts VI and VII. These are detailed new parts to Form 990 that cover governance, management and compensation questions. Because of their importance and the attention they deserve, these will be addressed starting in our next issue of [The Update](#).

THE UPDATE

QUICK LEGAL AND NON-PROFIT NEWS FROM THE LAW FIRM FOR NON-PROFITS®

The New IRS Form 990 - Part 3

Dear Nonprofit Colleague,

On November 10, the Commissioner of the IRS stated that his agency was "going to continue to insist that the [nonprofit] sector be squeaky clean" and that it is working to stop corruption and other abusive behavior by exempt organizations. Two weeks later, the head of the IRS' tax exempt organizations division clarified his boss's remarks, emphasizing that a principal focus of the agency's enforcement efforts with regard to nonprofits will be in the area of executive and board member compensation. This is considered by the IRS to be the area of greatest abuse by nonprofits and is now an automatic focus of every IRS audit of charitable nonprofits.

The newly revised Form 990, the annual information return for nonprofits, gives the IRS a well-honed tool for identifying excess and improper compensation by nonprofits. This issue of The Update [continues our tour of the new Form 990](#), focusing exclusively on the parts of the new Form 990 on which nonprofits report such information. Topics include:

- [An overview of Part VII of Form 990](#), the principal section for reporting compensation;
- [Who Must Be Listed](#);
- [The Information to Be Reported](#);
- [Schedule J](#), where more detailed information is reported on some individuals; and
- [Additional reporting in Part VI and Schedule L](#).

The rules for Part VII and Schedule J are among the most complex of all tax forms. This newsletter is meant as an introduction to these portions of the new Form 990 and its strengthened reporting requirements. If these requirements may be applicable to your organization, [please follow this link](#) to download the instructions for Part VII and [here for Schedule J](#). If needed, you should not delay seeking assistance from someone with appropriate expertise, whether from [The Law Firm for Non-Profits](#) or elsewhere.

Overview of Part VII

Part VII is the section of the [Core Form](#) where nonprofits organizations must provide information on a variety of persons - some compensated, some not. It also asks additional questions that may trigger the need to include more detailed information on [Schedule J](#).

Specifically, all organizations that file Form 990 must list:

- All directors and trustees, regardless whether they receive compensation;
- All key employees who earned more than \$150,000 in reportable compensation;
- The five highest compensated employees (other than officers, directors, trustees or key employees) who received reportable compensation of more than \$100,000;
- Former officers, key employees and highest compensated employees who received more than \$100,000 of reportable compensation;
- Former directors or employees who received more than \$10,000 reportable compensation; and
- Independent contractors who received more than \$100,000 in compensation.

These "persons" are defined in the next section of this newsletter. "Reportable compensation" is defined [two sections below](#). For purposes of Form 990, all officers, directors and trustees who served at any time during the tax year in question must be listed. For all others, the organization must report on those whose reportable compensation exceeded the applicable threshold during the calendar year ending within the organization's tax year. For example, an organization with a tax year that ends on June 30, 2009 would report covered persons based on their reportable compensation during the calendar year that ended December 31, 2008.

Definitions of Persons Who Must Be Listed

Directors and trustees are the members of the organization's governing body. They must be listed regardless whether they receive compensation from the organization.

Officers are defined as those persons identified as officers in the organization's bylaws, state law or other governing document. Also counted among officers are the organization's "top management official" and "top financial official," regardless of their titles or whether their positions are specified in the bylaws or state law. The top management official is the person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration or operation of the organization (e.g., the CEO). The top financial official is the person with responsibility for managing the organization's finances (e.g., the CFO). Independent contractors who perform the functions of CEO or CFO are treated as officers for purposes of Form 990.

Key Employees are persons other than officers, directors, or trustees who: (1) received reportable compensation exceeding \$150,000 for the calendar year ending within the organization's fiscal year; (2) were one of the 20 employees of the organization with the highest reportable compensation; and (3) satisfied any of the following:

- Had responsibilities, powers or influence over the organization as a whole;
- Managed a discrete segment or activity that represents 10% or more of the activities, assets, income or expenses of the organization; or
- Had authority or shared authority to control 10% or more of the organization's capital expenditures, operating budget or compensation of employees.

Independent Contractors are reported separately. For example, management companies that perform functions of key employees should be reported as independent contractors and not key employers. However, an independent contractor who serves as, or performs the duties of, the top management or top financial official is deemed to be an officer and must be reported as an officer on Part VII, not as an independent contractor. Also, if a current officer, director, trustee or key employee has a relationship with a management company that provides services to the organization, that relationship must be reported in Schedule L ([see below](#)).

A **Former** officer, director, trustee, key employee or highest compensated employee is reported if such person met the threshold applicable to the person's former office. The organization need only report on those former officials in office during the periods covered by the organization's prior five Forms 990, 990-EZ or 990-PF.

Reportable Information

For each individual listed, the organization must include his or her name and title, the average hours worked in their capacity for the organization during the year, reportable compensation received from the organization and related organizations, and estimated other compensation received from both the organization and related organizations.

Reportable Compensation is W-2 wages in the case of officers and employees, and 1099 income received by directors, and includes amounts from both the organization and related organizations. Related organizations are:

- Parent organizations (e.g., an organization that controls the filing organization),
- Subsidiaries (an entity controlled by the filing organization),
- Sister organizations (those controlled by the same persons or organization), or supported or supporting organizations.

Control generally exists where a majority of one organization's board is made up of members of the controlling organization's board, or if the latter has the power to elect or remove the controlled entity's board.

Other Compensation includes deferred compensation (not reported on Form W-2) and other benefits not included as taxable income. There is a limited exception for some amounts less than \$10,000.

The reporting for **Independent Contractors** is more limited, requiring only their names, addresses, the services provided and total compensation. As stated above, if an independent contractor provides management services to the organization, it may be reportable on Schedule J. Also, if a current officer, director, trustee or key employee has a relationship with a management

company that provides services to the organization, that relationship must be reported in Schedule L ([see below](#)).

Schedule J

[Schedule J](#) requires a more detailed breakdown of the compensation and other amounts paid to any specified persons. An organization must complete Schedule J if any of the conditions listed below occur. Schedule J asks several additional questions, including how the organization establishes compensation for its CEO, whether it provides certain services or benefits (e.g., first class or charter air travel companions, housing allowance social club dues, personal services, etc.) to persons listed in Part VII, if it has a written policy regarding payment or reimbursement of these expenses, and whether it requires substantiation prior to reimbursement or allowing the expense. It also asks questions with regard to severance payments, supplemental retirement plans, contingent compensation arrangements, and non-fixed compensation. "Yes" answers require a detailed description.

Schedule J must be completed if the answer to any of the following questions is yes:

- If any former officer, key employee or highest compensated employee received more than \$100,000 in reportable compensation;
- If any former director or trustee received reportable compensation exceeding \$10,000 in their capacity as a former director trustee;
- If the reportable compensation plus other compensation of any individual listed is greater than \$150,000; or
- If any person listed in Part VII received or accrued compensation from any unrelated organization for services rendered to the filing organization.

Part VI and Schedule L

In addition to Part VII and Schedule J, [Part VI](#) and [Schedule L](#) of the new Form 990 each have one question related to compensation. Part VI asks the organization to describe its process for determining the compensation of its top management official. Schedule L requires the organization to describe any "excess benefit transactions." These are certain transactions between a 501(c)(3) organizations and directors, officers, key employees, key donors and other insiders. [Click here to download a copy](#) of our Client Advisory on insider compensation and our article on excess benefit transactions. The remainder of Part VI and Schedule L will be discussed in the next issue of The Update.

Conclusion

The IRS Commissioner recently declared that: "What happens in the board room ends up mattering to us quite a bit." The IRS will gain deep insight into the board room with Part VII and Schedule J. of the new Form 990. These are complicated forms that require extensive preparation to properly and accurately complete. According to the IRS, even on the simpler, old form, compensation reporting was more often prepared incorrectly than correctly. A return with incorrect information is not a complete return and is a potential audit trigger.

Given this new scrutiny of charitable nonprofits by the IRS (as well as an ever-watchful Congress), it behooves every nonprofit to insure that its tax reporting is accurate and compliant with the new Form 990. We are prepared to help your organization get ready to meet its new obligations as well as review its Forms 990.

THE UPDATE

QUICK LEGAL AND NON-PROFIT NEWS FROM THE LAW FIRM FOR NON-PROFITS®

The New IRS Form 990 - Part 4

Dear Nonprofit Colleague,

The IRS has some questions for your nonprofit:

- **Does it have a written conflict of interest policy?**
- **Does it have a written whistleblower policy?**
- **Does it have a document retention and destruction policy?**

Starting this year, these and 25 additional questions about governance, policies and disclosures must be answered by every organization that files Form 990, the tax return form for nonprofits.

Is the IRS now involving itself into the board room? The answer is an unequivocal "yes." As we reported in the last issue of The Update, the Commissioner of the IRS recently stated that "what happens in the board room ends up mattering to us quite a bit." Subsequent statements by other IRS officials have resoundingly reiterated and emphasized this new focus on governance and accountability.

These questions are unprecedented, but the IRS has its reasons for asking. Its intent is to force nonprofit boards and executives to focus on accountability and good governance.

Many organizations will have trepidation about answering "no" to any of these questions. Generally speaking, these policies are not legal requirements and answering "no" will not automatically instigate an IRS audit. However, failing to answer any of these questions may be an audit trigger according to an IRS spokesperson. Whatever the case, these questions should be answered truthfully. Answering falsely can be a crime.

With that said, all organizations should have these policies. By asking these questions on the new Form 990, the IRS hopes that, where policies are nonexistent or lacking, boards will set about to create them. Likewise, where they do exist, it wants boards to periodically review and, if necessary, update them. We encourage our clients to do so without unnecessary delay.

You should also be aware that all Forms 990 of 501(c)(3) organizations are posted on the Internet (e.g., on [GuideStar](#)). Self-anointed watchdogs, critics, the press and anyone else who cares can readily learn if your organization does not have these policies. Whatever the reason, we can help draft or review these policies. Please [contact us](#) if we can be of assistance.

The new questions are found in Part VI of the new 990. [Click here](#) to download the draft Part VI and [here](#) for the relevant instructions. Additional links are the [bottom](#) of this newsletter.

Beyond the Core Form: Schedules to Form 990

In the last several weeks we have highlighted key elements of the new Form 990. In addition to the core form, there are 16 schedules. ([Download the Checklist of Required Schedules.](#)) Many are new and others have been substantially revised. Previous issues of The Update covered the revised [Schedule A \(Public Charity Status and Public Support\)](#) and the new [Schedule J \(Compensation Information\)](#). Below, we review two additional Schedules (L and R) that warrant special attention. In the next issue of The Update we will complete our survey of the new Form 990 by reviewing many of the other Schedules and summarizing how your organization might prepare to complete and file its Form 990 for 2008 and beyond.

Schedule L - Transactions with Interested Persons

Schedule L directly relates to Part VI's questions on governance and conflicts of interest. It requires details on a variety of transactions with a nonprofit's insiders or "interested persons" (i.e., board members, officers, key employees, key vendors and major donors, and their family members). Specifically, transactions and amounts must be detailed with regard to:

- Excess benefit transactions (e.g., transactions with interested persons that exceed the value of the services provided, among others);
- Loans to or from interested persons;
- Grants or assistance that benefit interested persons; and

- Business transactions involving interested persons

These all are transactions that may result in tax penalties and, in extreme cases, loss of tax-exemption. Other than excess benefit transactions (discussed in the last issue; [download our article](#) on the topic), which always are contrary to the law, the other transactions may be without issue if properly authorized by the board and not otherwise in violation of relevant state nonprofit corporation laws. Otherwise, they may result in penalties and loss of exemption.

Loans from interested persons to nonprofits are common and, if done right, lawful. Regardless, they must now be reported on Schedule L and disclosed to the public. Prudence thus dictates that all such loans should now be carefully documented as well as properly approved by the borrower's board. Doing so may also avoid implicating an otherwise unrelated tax law that imputes interest on below market (including interest-free) loans. As we have done for many of our clients, we can help your organization document and properly approve lawful loans to or from interested persons.

Grants and assistance to interested persons are lawful in many situations, but can be taxable and even result in loss of exemption if they provide "private inurement," or an inappropriate benefit to interested persons. The same is true for contracts and other transactions with, or that otherwise involve, interested persons. All such grants and transactions must be carefully scrutinized by the board under the laws of most states as well as to avoid violations of federal tax law. We help our clients structure and document these types of transactions and can do so for your organization. [Click to contact us](#) if we can assist with insider loans, grants and other transactions with insiders.

You can click a link to download the draft [Schedule L](#) and its [instructions](#).

Schedule R - Related Organizations and Unrelated Partnerships

Similar considerations apply to many transactions between a nonprofit and for-profit entities, whether the for-profits are related to the nonprofit or independent of it. Schedule R requires disclosure of these relationships, including the dollar amounts involved.

Many nonprofits own for-profit subsidiaries and are related to other tax-exempt organizations. All such relationships must be identified on Schedule R. Information about those relationships, including the issues of control and relative shares of income and assets, must also be disclosed.

[Click to download the draft Schedule R](#) and its [instructions](#).

Summary - The Brave New World of Nonprofit Accountability

The new Form 990 ushers in a new era of nonprofit disclosure and accountability. In addition to IRS review, organizations that do not self-police will be scrutinized by self-anointed public watchdogs, the media and state regulators, who will now have this information as near as their web browsers. Smart boards will proactively develop and enforce strong conflict of interest and other internal policies. The IRS believes that doing so will help to ensure that exempt organizations stay true to their missions and avoid improper transactions with insiders and third parties that may result in unpermitted benefits or diversion of a nonprofit's assets. Think of the new Form 990 as an invitation for all boards to develop and enforce good governance and accountability policies.

THE UPDATE

QUICK LEGAL AND NON-PROFIT NEWS FROM THE LAW FIRM FOR NON-PROFITS®

The New IRS Form 990 - Part 5

Dear Nonprofit Colleague,

Happy New Year. In this trying economic climate, we at The Law Firm for Non-Profits hope that 2009 will be a successful year for your organization. The financial meltdown has created difficult challenges for many of us. The next issue of The Update will discuss options to help nonprofits cope with the economic downturn.

With this issue we complete our survey of the new IRS Form 990. The focus is on what your organization should do to be ready to file the form and to meet the new disclosure requirements it imposes. Topics include:

- [Governance by Disclosure](#)
- [Compliance and Board Engagement](#)
- [Additional Schedules](#)
- [Conclusion and Links](#)

Form 990 is required to be filed by all nonprofit organizations except private foundations (which file Form 990-PF) and churches and church auxiliaries. Smaller organizations may be able to file Form 990-EZ or 990-N instead of Form 990. [See the first issue](#) in this series for applicable filing thresholds.

Governance by Disclosure

As we have indicated in prior issues in this series, a primary purpose of the new Form 990 is to enforce better governance practices by nonprofits. While the IRS will use information reported on an organization's Form 990 in its own review of that organization, it will rely most heavily on a given organization's desire to avoid having to publicly disclose inadequate policies and conduct that is not in compliance with the law.

Form 990 is a public document. Every nonprofit must provide a complete copy of its three most recent 990s on request to anyone who asks. The 990s of 501(c)(3) and some 501(c)(4) organizations are posted for free download at guidestar.org and elsewhere. Thus, they are freely and readily viewable by your organization's funders, volunteers, constituents, competitors and opponents as well as the press, watchdog groups and states' attorneys general. It is assumed by the IRS that the directors, officers and executives of most nonprofits will want to avoid having to publicly disclose insufficient or nonexistent policies and practices.

What are those policies and practices? In the 11 page core form and 16 schedules (some of which will be applicable to all filers), Form 990 requires disclosure of such items as:

- Current board members, officers, key employees, and key independent contractors (discussed in [Part 3](#) of this series);
- Compensation of current and former board members, officers, key employees and independent contractors ([Part 3](#));
- Policies for compensation of board members, officers, and key employees and contractors ([Part 3](#));
- Conflict of interest policies and practices ([Part 4](#));
- Whistleblower policies ([Part 4](#));
- Document retention and destruction policies ([Part 4](#));
- Overseas activities;
- Fundraising activities;
- Gaming revenue;
- Grantmaking activities;
- Transactions with interested persons, related parties and for profit (taxable) entities ([Part 4](#));
- Liquidations, terminations and sales of assets;
- Political activity; an

- Procedures to provide Form 990 to each member of the board in advance of it being filed.

Compliance and Board Engagement

All organizations should have and enforce conflict of interest, whistleblower, document retention and destruction, and compensation policies. As indicated, these have been discussed in past issues in this series. If written policies and procedures do not exist, they should be drafted. If desired, we can assist you to develop these policies.

Any organization that engages in any of the other activities listed will likely be required to complete one or more Schedules. Each may require disclosure of the organization's applicable policies as well as procedures employed to enforce them and information regarding the activity itself.

Organizations should not conduct these activities without understanding the legalistic IRS regulations that govern their conduct. Many organizations feel that if they "do the right thing" they will be okay. We know from experience that this is not always so. Without policies that incorporate IRS requirements, organizations are at risk of engaging in improper or unlawful conduct - which they will be required to be disclose to the public on Form 990.

Arguably, it is the duty of every board member of every nonprofit to understand the new Form 990 and the information it captures. The more they do so and the more they employ this understanding in the development of appropriate policies and procedures, the easier will be the transition to the new form and the better served will be the organization.

The IRS takes this position. Indeed, one of the questions in the Governance section of Form 990 (Part VI) asks: "Was a copy of Form 990 provided to the organization's governing board before it was filed? All organizations must describe . . . the process, if any, the organization uses to review the Form 990."

We suggest that review of Form 990 be a major topic for active discussion at a board meeting no less than one month before the form's filing deadline. No single step may do more to encourage good governance than to have all directors read and discuss the tax form that will speak to the public on their organization's behalf.

Additional Schedules

Prior Updates have discussed Schedules J, L and R. Several other schedules deserve mention. Specifically, we will touch on Schedules A, C, F, G, I, M and N. A If you determine that any of these are applicable to your organization, you may wish to [contact us](#) to provide additional detail and help you comply with the requirements.

Schedule A is a revised version of the support schedule to the old Schedule A. The IRS has eliminated the advance ruling period, expanded the look back period, and instituted additional reforms with regard to meeting public support tests. These are addressed in the new Schedule A. We have a separate Client Advisory on this topic that we will gladly email to our clients [on request](#).

Organizations that engage in political campaign activity (unlawful for 501(c)(3) organizations) and lobbying are now required to submit **Schedule C**.

Schedule F must be filed by organizations that conduct activity outside of the United States including any of: grants to foreign organizations, foreign governments and individuals; fundraising activities; unrelated trade or business; program services; or maintaining offices, employees or agents in foreign countries for the purpose of conducting the nonprofit's activities. If aggregate revenue or expenses in the filing year from or attributable to these activities are \$10,000 or less, then the organization need not file Schedule F.

Schedule G is required to be filed by an organization that, during the filing year, (1) paid professional fundraisers more than \$15,000, (2) had revenue from fundraising events in excess of \$15,000, or (3) had gaming (e.g., bingo, poker nights, etc.) revenue in excess \$15,000.

Every organization that made grants, whether to individuals or organizations, totaling more than \$5,000 in a tax year must complete **Schedule I**.

Schedule M is new. It is used to report non-cash contributions received during the tax year. Organizations that received more than \$25,000 in aggregate non-cash contributions must complete Schedule M. Additional information is required when the non-cash contribution is a work of art, a collectible, an historical treasure, or a conservation easement.

Schedule N is also new. It is required whenever an organization goes out of business (e.g., through dissolution, liquidation, termination or merger) or disposes of more than 25% of its net assets.

We are ready to assist you to determine if any of these Schedules apply to your organization, provide additional information and prepare the Schedule. Please phone or [send us an email](#) to get started.

Conclusion and Links

While the polices queried in the governance section of Form 990 (Part VI), discussed in [Part 4](#) of this series, are not required to maintain exemption, having such policies in place and enforcing them will serve your organization's best interests. Policies regarding specific activities will help to ensure compliance with IRS regulations. Regardless, remember that the world will be watching, as Form 990 is a public document that anyone can download for free. A board that is given a chance to review Form 990 before it is filed may be particularly keen to adopt best practices policies and procedures. Doing so should be encouraged.

The advent of the new Form 990 is also a good time to thoroughly review your organization's accounting system and, if necessary, revise it to accurately record revenue, expenses, assets and liabilities. Doing so may be especially important given the complexity of the new form. That complexity also suggests that your organization should deliver its financial information to its tax accountant as much as three months before the final filing deadline. As the majority

of information to be reported may now be narrative, it also may be critical to have the organization's legal counsel review its Form 990 well before filing.

The final version of Form 990, all schedules and instructions are downloadable at the [IRS website](#). Finally, Forms 990 of all 501(c)(3) and some 501(c)(4) organizations are downloadable from [guidestar.org](#)"

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