

**Maintain Your Tax Exemption:  
Prepare Now for the New IRS Form 990**



**Foley & Lardner LLP**

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**Welcome & Introductions**



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## Introductions



**Richard S. Gallagher**



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# Introductions



Richard F. Riley



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# Introductions



Marsha E. Huff



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**The New Form 990**  
**Why Worry About it Now?**



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## What Tax Forms Do Exempt Organizations File?

1. 501(c)(3) organizations that are not private foundations (e.g., schools, hospitals, community service organizations) and all other tax-exempt organizations that are not described in 501(c)(3) (e.g., social clubs, professional and trade associations, 501(c)(4) advocacy organizations) file Form 990 unless their revenues allow them to file Form 990EZ.<sup>1</sup>

<sup>1</sup> Although churches and their integrated auxiliaries are not required to file Form 990, such organizations should review the Form 990 as a checklist of compliance with rules to which they are subject notwithstanding the lack of a return filing requirement.



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## What Tax Forms Do Exempt Organizations File?

2. Such organizations file Form 990EZ if their revenues are \$1 million or less and their assets are \$2.5 million or less in 2008; if their revenues are \$500,000 or less and their assets are \$1.25 million or less in 2009; and if their revenue is \$250,000 or less and their assets are \$500,000 or less thereafter.
3. Private Foundations continue to file Form 990PF (which has not been revised).



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## Why Worry About It Now?

The new Form 990 asks questions about *what your organization did in 2008*. In order to put your best foot forward, your organization needs to take steps now to be sure it answers the questions appropriately and demonstrates compliance with applicable rules.



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## So Have the Rules Changed?

By and large the rules have not changed, but the degree of reporting has. You may or may not have been in technical compliance with all the applicable rules in the past, but now in many cases you are asked if you were in compliance in 2008 or later applicable year.

And the degree of information your organization is being asked to provide has increased dramatically—even though it may not be a matter of technical compliance with clear existing rules.



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## Does My Organization Have to Do Everything the Form 990 Asks Me About?

In many cases the Form 990 asks questions about governance and other matters that suggest an IRS requirement, when in fact no such specific requirement exists. Your organization will need to decide if it wants to evidence compliance with implied “best practices” which may be used in part by the IRS as a metric of public purpose operation.



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## Preparing For The New Form 990

**Some Information You Need To Have  
And Actions You Need To Take This Year  
To Put Your Best Foot Forward**

(Note: Not All Items Asked About Are IRS  
Requirements)



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# Reporting Compensation

Form 990 Reference	Information/Action Step
<b>Part VII Section A</b>	<p>Part VII, Section A – Itemized listing of (in this order):</p> <ul style="list-style-type: none"> <li>- All current individual directors and trustees</li> <li>- All current “institutional” trustees</li> <li>- Five current highest compensated employees who received over \$100,000</li> <li>- All current officers</li> <li>- All current “key employees”</li> <li>- Five highest compensated individuals who are not officers, directors or key employees, and who received total W-2/1099 compensation over \$100,000</li> <li>- All former officers, directors, trustees (and apparently former key employees and former highly compensated individuals) currently receiving compensation over \$10,000</li> </ul> <p>For the above individuals, report in Part VII the sum of all W-2 and 1099 compensation, and other compensation (benefits, etc.), received from both the reporting organization and all related organizations.</p> <p>For any persons in the above list who (1) are former officers, directors, etc.; (2) receive more than \$150,000 compensation from the organization plus related organizations; or (3) were paid by an unrelated organization for services rendered to the reporting organization: <b>Schedule J</b> must be completed for those persons.</p>
<b>Part VII Section B</b>	<p>Part VII (Section B) requires a listing of the five highest compensated independent contractors who received over \$100,000 from the organization.</p>



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# Reporting Compensation

Form 990 Reference	Information/Action Step
<b>Schedule J Part II</b>	<p>Specialized and Detailed reporting of compensation.</p> <p>For all persons reportable on Schedule J, Part II – that is, the indicated persons from Part VII, Section A as described above – identify the individuals and report the following</p> <ul style="list-style-type: none"> <li>- Base compensation</li> <li>- Bonus and incentive compensation</li> <li>- “Other compensation”</li> <li>- Deferred compensation</li> <li>- Nontaxable benefits</li> <li>- Total compensation as reported in prior Form 990</li> </ul>
<b>Schedule J Part I</b>	<p>Unusual compensation situations.</p> <ul style="list-style-type: none"> <li>- Report, and provide information about, any of the following if provided to Part VII, Section A individuals: <u>first-class/charter travel, spouse/companion travel, tax gross-up payments, discretionary spending accounts, housing allowance, provision of residence, or payments for business use of residence, health club or social club membership or payments, and personal services (maid, chauffeur, chef).</u></li> </ul>



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# Reporting Compensation

Form 990 Reference	Information/Action Step
<b>Schedule J Part I</b>	<p>Indicate which one or more of the following are used to establish <u>CEO</u> compensation (nobody else): <u>compensation committee</u>, <u>independent consultant</u>, <u>Form 990 of other organizations</u>, <u>written employment contract</u>, <u>compensation study or survey</u>, <u>approval by board or committee</u>.</p> <p>Also, report the following and provide information and amounts:</p> <ul style="list-style-type: none"> <li>- Nonqualified retirement plans.</li> <li>- Equity-based compensation arrangements.</li> </ul> <p>For 501(c)(3) and 501(c)(4) organizations:</p> <ul style="list-style-type: none"> <li>- Any compensation contingent on either <u>revenues</u> or <u>net earnings</u>, of either the reporting organization or any related organization.</li> <li>- Other "non-fixed" compensation payments</li> <li>- Compensation subject to the "initial contract exception" under the excess benefit rules.</li> </ul>



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# Director, Trustee, etc. relationships

Form 990 Reference	Information/Action Step
<b>Part VI, Line 2, Schedule O</b>	<p>General disclosure of whether any officer, director, trustee or key employee has a "family" or "business" relationship with any other officer, director, trustee or key employee.</p>
<b>Schedule L</b>	<p>Disclosure of details of transactions with certain "interested persons," which are initially reported on a yes-or-no basis in Part IV. NOTE: in general, the disclosure obligations apply to transactions involving officers, directors, trustees, key employees, highly compensated individuals, substantial contributors, and other significant "players," <i>but the definitions of "interested persons" are slightly different in each case.</i></p> <ul style="list-style-type: none"> <li>- <u>Excess benefit transactions</u>. Section 501(c)(3) and 501(c)(4) organizations must identify the participants and amounts of any "excess benefit transaction" as defined in section 4958, and confirm if the improper transaction has been corrected.</li> <li>- <u>Loans</u>. Identify participants, amounts, terms and other details relating to any loans made by the organization to current or former officers, directors, key employees, etc.</li> <li>- <u>Grants or assistance transactions</u>. Identify participants, amounts, terms and other details relating to any loans made by the organization to officers, directors, key employees, etc.</li> <li>- <u>Business transactions and relationships</u>. Identify participants, amounts, terms and other details relating to business transactions or other business "relationships," directly or indirectly, between the organization and its officers, directors, key employees, etc.</li> </ul>



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## Governance and Procedures

Form 990 Reference	Information/Action Step
Part VI, lines 1, 3, 6, 7	Number of members and “independent” members of “governing body” (a term that must be defined—Catholic Schools? Hospital Systems? Delegation of authority to a management committee or other person? Circumstances, processes, changes in membership and member approval of governing body actions.
Part VI, line 8	Written minutes of Board and Executive Committee
Part VI, line 8	Written policies to ensure that activities of chapters and affiliates are consistent with the policies and procedures of the organization



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## Governance and Procedures

Form 990 Reference	Information/Action Step
Part VI, line 12	Written conflict of interest policy and how the policy is consistently monitored and enforced
Part VI, line 13	Whistle blower policy; no question about whether it is written; no required disclosure of the policy.
Part VI, line 13	Written document and destruction policy; no required disclosure of the policy.



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## Governance and Procedures

Form 990 Reference	Information/Action Step
Part VI, line 15	Process (described in Schedule O) for determining the compensation of the CEO, Executive Director, or top management official, or other officers or key employees and whether it included the intermediate sanctions “safe harbor” of review and approval by independent persons, comparability data, and “contemporaneous substantiation of the deliberation and decision.”



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## Governance and Procedures

Form 990 Reference	Information/Action Step
Part VI, lines 18, 19,20 Schedule O	Acknowledgment that the organization understands that it must make available to the public on request its IRS exemption application (Form 1023 or 1024 if filed on or after July 15, 1987 or is otherwise available) as well as its Form 990 and (in the case of a 501(c)(3)) 990T, and a statement of how it does so, as well as a statement whether and, if so, how it makes available to the public its governing documents, conflict of interest policies, and financial statements (as well as the name and phone number of the person who possesses the books and records).



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## Assets, Investments, Relationships and Transactions

Form 990 Reference	Information/Action Step
Schedule K	If the organization has more than \$100,000 of tax exempt bonds outstanding at the end of 2007, it will have to disclose whether it invested any proceeds beyond a temporary period exception; whether it maintained an escrow account other than a refunding escrow account at any time during the year to defease any tax-exempt bonds; and whether it acted "on behalf of" issue bonds outstanding at any time during the year. <i>This is a precursor to what are expected to be much more involved questions regarding tax-exempt bonds in future returns.</i>



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## Assets, Investments, Relationships and Transactions

Form 990 Reference	Information/Action Step
Schedule D, Part I; Part V, lines 8,9	Information on Schedule D regarding donor advised funds or any other account where donor has the right to provide advice on distribution of funds. Statement in Part V of donor advised fund compliance with new rules under Pension Protection Act of 2006.
Schedule D, Part II	Conservation easements
Schedule D, Part III	Works of art, historical treasures or similar assets
Schedule D, Part V	Term, permanent or quasi-endowments



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## Assets, Investments, Relationships and Transactions

Form 990 Reference	Information/Action Step
Schedule D, Parts VI, VII, VIII, IX, X	Detail on all assets other than publicly traded securities
Schedule N	Disclose and explain (1) liquidations and terminations, and (2) dispositions of more than 25% of assets or other substantial contractions.
Schedule R, Parts I, II, III, IV, and V line 1	Disclosure of transactions with any related tax-exempt or taxable entity (as well as a disclosure of all such relationships)



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## Assets, Investments, Relationships and Transactions

Form 990 Reference	Information/Action Step
Schedule R, Part V line 2	If the related organization is 50% or more controlled, disclose more detail including potentially taxable interest, annuities, royalties and rents. Must determine who controls whom in some complicated systems (not new law, just new disclosure). <i>Caveat:</i> Income reported may have to be reported as taxable income on Form 990T.
Schedule R, Part V line 2	Disclosure of transfers to a non-charitable related organization
Schedule R, Part VI	Disclosure if more than 5% of the activities of the organization are conducted through an entity that is <i>not</i> a related organization but is taxed as a partnership.



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part IV, line 2 Schedule B	As in the past, the identity of donors of more than \$5,000 must be disclosed (this information is not made public)



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part IV, Line 29 Schedule M Schedule D, Part II (for Conservation Easements) Schedule D, Part III (for Museums and Others with Collections of Art) Part IV, line 17 Part IX, line 11e Schedule G Part U	<p>If the organization received more than \$25,000 in cash contributions (or, even if less, certain kinds of property), detailed aggregate information must be provided with respect to the number of contributors and revenues (with an explanation of how the value of such revenues were determined) of art (see Schedule D Part III for supplemental financial information required of organizations maintaining collections of art); books; clothing and personal goods; cars and other vehicles; boats and planes; securities; qualified conservation contributions (see Schedule D supplemental financial information required); real estate; collectibles; food inventory; drugs and medical supplies; taxidermy; historical and architectural artifacts; scientific specimens; and other types of property.</p> <p>The organization must also disclose (A) whether it received any property that it must hold for at least three years and that is not required to be used for the exempt purpose of the organization (Caveat: Such property is not eligible for tax deduction [if it will not be used for the exempt purposes of the organization] even though it is outside the Form 8282 time reporting limits); (B) whether the organization has a gift acceptance policy that requires the review of any non-standard gift; and (C) a description if the organization hires or uses third parties to solicit, process, or sell non-cash gifts.</p>



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part IV, Line 18 Part IX, lines 1c, 8a Schedule G Part II	If the organization raised more than \$15,000 of gross revenue (with contributions) or more than \$15,000 of gross revenue (without contributions) at <i>fund-raising events</i> (auctions, dinners, balls) it must list the following detail about <i>each fund-raising event at which more than \$5,000</i> is received: Gross receipts; contribution portion of gross receipts; cash and non-cash prizes; rent/facility costs; and direct expenses.



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part IV, line 19 Part IX line 9a Schedule G Part III	If the organization raised more than \$15,000 of gross revenue from gaming activities (raffles, bingo, etc.), it must detail expenses and net revenue <i>and</i> disclose whether the gaming was conducted entirely with volunteer labor or with some percentage of non-volunteer labor. <i>Caveat:</i> Unless the gaming was conducted with substantially all (85%?) labor, the net proceeds may be subject to the tax on unrelated business income reportable on Form 990T.



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part V, line 6	Disclose any nondeductible contributions (e.g., a contribution to a 501(c)(4) action group, 501(c)(6) trade association, 5012(c)(7) social club) and state whether every solicitation contained a statement that contributions of gifts were not tax deductible.
Part V, line 7a, b	Demonstrate compliance with the rule that a contemporaneous receipt must be provided stating the deductible and nondeductible portion of gifts (such as galas and dinners) where goods and services were provided.



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part V, line 7c, 7d	Demonstrate compliance with the rule that a Form 8282 must be filed if the organization sold donated tangible personal property (e.g. auction items) within three years of the gift (must also state the number of Forms 8282 filed).
Part V, lines 7e, f	Report receipt of funds for personal services contracts.
Part V, line g	Demonstrate compliance with the rule that a Form 8899 must be filed for contributions of qualified intellectual property.



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part V, line 7h	Demonstrate compliance with the rule that a Form 1098-C must be filed for all contributions of cars, boats, airplanes and other vehicles.
Part V, lines 8, 9	501(c)(3) and other sponsoring organizations maintaining donor advised funds must report whether a fund had “excess business holdings” in a business enterprise (anything above 2% should be examined) or made distributions to a private foundation, a “Type III” 509(a)(3) supporting organization, or a donor, donor advisor or related person. <i>This is a trick question.</i> Any of these actions will cause potential problems for the donor advised fund.



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## Contributions and Revenues

Form 990 Reference	Information/Action Step
Part V, line 10 Part VIII, line 12	501(c)(7) <u>social clubs</u> must state the amount of initiation fees and capital contributions received during the year <i>and</i> gross revenues from public use of club facilities. ( <i>Caveat:</i> Too much public use can create (a) taxable unrelated business income or (b) loss of exempt status.)



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## Foreign Activities

Form 990 Reference	Information/Action Step
Part IV, line 14a	Disclose whether the organization had an office, employees or agents outside the U.S. (addresses, names, etc. not required).
Part IV, line 14b Schedule F Part I	Complete Schedule F Part I if the organization maintained an office, employees or agents outside the U.S. and had more aggregate revenues or expenses or more than \$10,000 from grantmaking, fundraising, business, and program services outside the U.S.



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## Foreign Activities

Form 990 Reference	Information/Action Step
Part IV, line 15 Part IX, line 3 Schedule F Part II	Whether or not the organization maintained an office, employees or agents outside the U.S., Schedule Part II must be completed if the organization expended more than \$5,000 to any <i>organization or entity</i> outside the U.S. The organization's name must be provided as well as its U.S. Employer Identification Number or what Internal Revenue Code Section it would be classified under if it were a U.S. tax-exempt organization.
Part IV, line 16 Part IX, line 3 Schedule F, Part III	Whether or not an organization maintained an office, employees or agents outside the U.S., Schedule F Part III must be completed if the organization expended more than \$5,000 of aggregate assistance to <i>individuals</i> located outside the U.S. The names do not need to be disclosed, but the purpose of each grant does.



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## Political Activities And Lobbying

Form 990 Reference	Information/Action Step
Schedule C	Disclose Direct or indirect political campaign activities (none permitted for 501(c)(3) organizations.)
Schedule C	Disclose lobbying (influencing legislation) activities (must be insubstantial for a 501(c)(3) subject to an election to treat up to certain amounts of expenditures as permitted lobbying expenditures.)



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## Schedules Required For Specific Types Of Organizations

Form 990 Reference	Information/Action Step
Schedule E	Schools
Schedule H	Hospitals



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## Highlights: Form 990 Part I (Summary)

### Line Number

1. Briefly describe the organization's mission or most significant activities (3 ½ lines provided).
3. The number of voting members of the governing body
4. The number of independent voting members of the governing body
5. The number of employees
6. The total number of volunteers (estimate)
7. Gross and net taxable income from unrelated activities
- 8 -12 Revenues
- 13-18 Grants, member benefits, salaries, professional fundraising and other expenses
- 21-22 Assets and Liabilities



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## Highlights: Form 990 Part II (Signature Block) Form 990 Part VI Sections A and C (Disclosure)

### Signature

- An officer must sign the Form 990 (bottom of first page).



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## Highlights: Form 990 Part II (Signature Block) Form 990 Part VI Sections A and C (Disclosure)

### Internal Review

Question 10 of Section A of Part VI (page 6) asks

1. Was a copy of the Form 990 provided to the organization's governing body before it was filed? **Note:** There is no IRS legal requirement to do so.
2. [Directs] that Schedule O be attached describing the process, if any, the organization uses to review the Form 990. **Note:** There is no IRS legal requirement to have such a process.



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## Highlights: Form 990 Part II (Signature Block) Form 990 Part VI Sections A and C (Disclosure)

### Public Disclosure

An organization is required to make available for public inspection the following documents:

- Form 1023 Exemption Application (or Form 1024 in the case of organizations that are not described in 501(c)(3).
- Form 990 (last three years).
- Form 990T (Unrelated Business Income) for 2006 and later years (last three years).

Question 18 in Section C of Part VI (page 6) asks how these are made available (any or all of website, someone else's website, upon request). **Note:** The only legal requirement is that they be made available for view and/or copying on request.



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## Highlights: Form 990 Part II (Signature Block) Form 990 Part VI Sections A and C (Disclosure)

### Public Disclosure

Question 19 in Section C of Part VI (page 6) asks whether (and if so, how) the organization makes the following available to the general public **Note** : There is no IRS legal requirement to make any of these available to the general public:

- Governing Documents
- Conflict of Interest Policy
- Financial Statements



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## Highlights: Form 990 (Part III) (Program Service Accomplishments)

Note: In many cases organizations have conducted activities that may or may not have been described in the organization's original application for exemption many years ago, notwithstanding that the organization's tax exemption letter from the IRS says it is only valid so long as there are no material changes in the organization's activities. Form 990s for prior years may or may not have described current activities.

The new Form 990 presumably speaks only to the filing year to which it relates (2007 in the case of the new Form 990 due in 2008).



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## Highlights: Form 990 (Part III) (Program Service Accomplishments)

### Line Number

- 1 ***Briefly describe the organization's mission (Note: Line 1 of Part I asks the organization to describe its mission of most significant activities. The return preparer may wish simply to reference that prior answer.***
- 2 ***Describe in Schedule O any significant program services during the year that were not described on the prior Form 990 or 990EZ. This is an interesting question: Does "the" prior Form 990 or 990EZ mean the one for 2006 which will be filed in 2007, or any prior 990 or 990EZ?***
- 3 ***Describe in Schedule O any program service that the organization ceased conducting or significantly changed.***



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## Highlights: Form 990 (Part III) (Program Service Accomplishments)

### Line Number

- 4a,b,c **Describe the exempt purpose achievements for the organization's three largest program services by expenses. Note:** Section 501(c)(3) (charitable, educational etc.) organizations and 501(c)(4) social advocacy organizations must report the amounts of grants and allocations to others, the total expenses, and the total revenue, if any, from each of these three program services. 2008 Action: Determine how these allocated costs, etc. are going to be determined. Note also that what is asked for is a statement of achievements.
- 4e **Restate total program service expenses as shown in Part IX line 25(B)**



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
1	A	Schedule A must be filed by all 501(c)(3) organizations to demonstrate that the filing organization is <i>not</i> a “private foundation.”
2	B	Schedule B must be filed by 501(c)(3) organizations to disclose the identity of all persons who made gifts of more than \$5,000
3	C	Direct or indirect political campaign activities on behalf of or in opposition to candidates for public office must be disclosed. <b>Note:</b> Any such activity on the part of a 501(c)(3) is a violation of exemption and any such activity on the part of the organization may or may not violate federal or state election laws.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
4	C	501(c)(3) organizations must describe lobbying (influencing legislation activities). <b>Note:</b> Such an organization may engage in “insubstantial” lobbying activities, or may elect to treat up to certain amounts of expenditures as permitted lobbying expenses.
5	C	501(c)(4), 501(c)(5) and 501(c)(6) organizations must file a lobbying notice and may pay a “proxy” tax (in lieu of advising members that some portion of their otherwise deductible dues are not deductible) if some portion of member dues is used for lobbying.
6	D Part I	Donor Advised Funds <i>or</i> any account where a donor has the right to provide advice on distribution or investment of funds



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
7	D Part II	Receipt or holding of a conservation easement
8	D Part III	Maintenance of works of art, historical treasures or similar assets
9	D Part IV	Credit counseling, debt management, credit repair, or debt negotiation services, escrow account liability (Part X line 21 [page 11] of Balance Sheet), or service as a custodian for an amount not listed on Part X Balance Sheet
10	D Part V	Term, permanent or quasi-endowments



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
11	D Parts VI, VII, VIII, IX, X	Assets reported on Part X Balance Sheet as land, buildings and equipment; securities other than publicly traded securities; program-related investments; "other assets"; "other liabilities."
12	D Parts XI, XII, XIII	Complete these schedules if the organization received an audited financial statement
13	E	Schools must complete Schedule E
14b	Part I	Schedule F Part I is required if the organization maintained an office, employees, or agents outside the U.S. (see line 14a), and had aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, and program services outside the U.S.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
15	F Part II	Schedule F Part II is required if the organization expended more than \$5000 in grants or assistance to <i>any</i> organization or entity outside the U.S. (as reported on Part IX line 3).
16	F Part III	Schedule F Part III is required if the organization expended more than \$5,000 of <i>aggregate</i> assistance to individuals located outside the U.S. (as reported on Part IX line 3).
17	G Part I	Schedule G Part I must be complete if the organization spent more than \$15,000 on professional fundraising (as reported on line 11e of Part IX).



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
18	G Part II	Schedule G Part II must be completed if the organization raised more than \$15,000 (with contributions) and more than \$15,000 (without contributions) from fundraising events (as reported on lines 1c and 8a of Part VII Statement of Revenue).
19	G Part III	Schedule G Part III must be completed if gross income from gaming activities is more than \$15,000.
20	H	Hospitals complete Schedule
21	I Part I	Schedule I Part I must be completed if grants in the U.S. exceeded \$5,000
22	I Part II	Schedule I Part II must be completed if grants to individuals in the U.S. exceeded \$5,000.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
23	J	Schedule J must be completed if (a) any <b>former</b> officers, directors, trustees, key employees, or highest compensated employees received more than \$100,000 of “reportable” (W-2 Box 5, 1099-MISC Box 7) compensation; (b) any of the five highest paid <b>current</b> employees (other than an officer, director, trustee or key employee) received more than \$100,000 of “reportable” compensation; (c) any <b>current</b> officers, directors, trustees and key employees have “reportable and other” compensation exceeding \$150,000 from the organization <i>and</i> related organizations; or (d) any <b>former</b> director or trustee received more than \$10,000 of “reportable” compensation from the organization <i>and</i> any related organization. See Part VII Questions 3, 4, 5.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
24 a b c	K	If the organization had an outstanding principal amount of more than \$100,000 of tax-exempt bonds outstanding as of the end of 2007, and that was issued after 12/31/2002, it must complete Schedule K <i>and</i> disclose (a) whether it invested any proceeds of tax-exempt bonds beyond a temporary period exception; (b) whether it maintained an escrow account other than a refunding escrow account at any time during the year to defease any tax-exempt bonds; and (c) whether it acted as an “on behalf of” issuer for bonds outstanding at any time during the year.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
25 a b	L	A 501(c)(3) and 501(c)(4) organization must complete Schedule L Part I if it engaged in or became aware of a prior "excess benefit transaction" (generally meaning a less-than-arm's length transaction benefiting a director, trustee, officer, manager or person with substantial influence over the organization)
26	L	Loans to a current or former officer, director, trustee, key employee, highly compensated employee, substantial contributor, person with substantial influence, or a member of the family of any of the foregoing, must be disclosed on Schedule L Part II.
27	L	Grants or other assistance to an officer, director, trustee, key employee, or substantial contributor, or a person related to such an individual, must be disclosed on Schedule L Part III.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
28 a b c	L Part IV	The organization must disclose on Schedule L Part IV whether any person who is a current or former officer, director, trustee, or key employee (a) had a direct business relationship with the organization (other than as an officer, director, trustee, or employee), or an indirect business relationship through ownership of more than 35% in another entity (individually or collectively with other person(s) listed elsewhere in the Form 990 (Part VII Section A) as receiving compensation from the organization); (b) had a family member who had a direct or indirect business relationship with the organization; or (c) served as an officer, director, trustee, key employee, partner, or member of an entity (or a shareholder of a professional corporation) doing business with the organization.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
29	M	The organization must complete Schedule M if it received more than \$25,000 in cash contributions.
30	M	The organization must complete Schedule M if it received contributions of art, historical treasures, or other similar assets, or qualified conservation contributions.
31	N	The organization must complete Schedule N Part I if it liquidated, terminated, or dissolved and ceased operations.
32	N	The organization must complete Schedule N Part II if it disposed of or transferred more than 25% of its net assets or underwent a “substantial contraction.”



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
33	R Part I	The organization must disclose and identify by name (as well as income and assets) any entity that is owned 100% and treated for tax purposes as a “disregarded” entity.
34	R Parts I, II, III, IV, and V line 1	The organization must disclose whether it is “related” to any tax-exempt or taxable partnership, corporation or trust, as well as whether it had transactions with any such entity.
35	R Part V, line 2	The organization must disclose whether any related organization is 50% or more controlled by it and in such event must disclose the amounts involved in transactions (including receipt of potentially taxable interest, annuities, royalties and rents) with such controlled entities.



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## Highlights Form 990 Part IV (Required Schedules)

Line	Schedule	Description
36	R Part V, line 2	A 501(c)(3) organization must disclose the amounts of any transfers to an exempt <i>non-charitable related</i> organization.
37	R Part VI	If an organization conducted more than 5% of its exempt activities through an entity that is not a related organization and is taxed as a partnership, it must complete Schedule R Part VI.



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## Highlights: Rom 990 Part V (Statements Regarding IRS Filings and Tax Compliance)

Line	Required Information
1a	Number of forms submitted for independent contractors and certain others (e.g., Form 1099s).
1b	Number of W2Gs (Gaming Income) submitted.
1c	Statement (all statements are made subject to perjury penalties) that backup withholding occurred for reportable gaming winnings.
2a	Number of employees reported on IRS Form W-3 transmitting W-2s.
2b	Statement that all required federal employment tax returns were filed.



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## Highlights: Rom 990 Part V (Statements Regarding IRS Filings and Tax Compliance)

Line	Required Information
3	Statement whether there was more than \$1,000 in unrelated business income tax and, if so, whether a Form 990T was filed (or, if not, why not).
4	Disclosure of financial accounts in a foreign country
5	Disclosure whether the organization participated in a “prohibited tax shelter transaction” and, if it did, whether it filed required Form 8886-T.
6	Disclosure of any nondeductible contribution (e.g., a contribution to a 501(c)(4) advocacy organization or a 501(c)(7) social club) and, if there were any, whether the organization included with every solicitation a statement that such contributions of gifts were not tax deductible.



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## Highlights: Rom 990 Part V (Statements Regarding IRS Filings and Tax Compliance)

Line	Required Information
7a, b	If the organization provided goods or services (e.g., dinner at a fundraiser) in exchange for any contribution of \$75 or more, a statement that the organization notified the donor of the value of the goods or services provided.
7c, d	If the organization sold, exchanged, or otherwise disposed of donated tangible personal property (e.g., at an auction) whether it filed Form 8282 (required if such property is disposed of within three years of the gift) and the number of Forms 8282 filed.
7e, f	Receipt of funds for and/or payment of premiums on a personal benefits contract.



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## Highlights: Rom 990 Part V (Statements Regarding IRS Filings and Tax Compliance)

Line	Required Information
7g	Statement that Form 8899 was filed for contributions of qualified intellectual property.
7h	Statement that Form 1098-C was filed for all contributions of cars, boats, airplanes and other vehicles.
8, 9	501(c)(3) and other sponsoring organizations maintaining donor advised funds must state whether such a fund (a) had excess business holdings (generally speaking, an interest in a business enterprise that is greater than 2% and exceeds 20% less the interest owned by the donor and his family, related trusts, etc.); (b) made distributions to private foundations of "Type III" 509(a)(3) supporting organizations; or (c) made a distribution to a donor, donor advisor or related person.



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## Highlights: Rom 990 Part V (Statements Regarding IRS Filings and Tax Compliance)

Line	Required Information
10	501(c)(7) social clubs must state the amount of initiation fees and capital contributions during the year (also included in Part VIII line 12 total revenues) <i>and</i> gross revenues for public use of club facilities (also included in Part VIII line 12 total revenues).
11	501(c)(12) local benevolent life insurance associations must disclose gross income from members and shareholders as well as gross income from other sources.
12	If the organization is a non-exempt charitable trust filing Form 990 in lieu of Form 1041, it must disclose the amount of tax-exempt interest it received or accrued during the year.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

**Note:** This Part of the Form 990 requests information about policies not required by the Internal Revenue Code but reflective of Internal Revenue Service and Congressional Emphasis On Governance Practices.<sup>1</sup>

**Note:** All organizations which file Form 990 (including 501(c)(4) advocacy organizations, social clubs, veterans organizations, cemeteries etc. must answer these governance questions).

<sup>1</sup> See "Good Governance Practices for 501(c)(3) Organizations," (Draft Internal Revenue Service document published in 2007 *Tax Notes Today* 27-18 as Document 2007-3317; see also speeches by Steven R Miller, IRS Commissioner of the Tax Exempt and Government Entities Division, published on the IRS website ([www.irs.gov](http://www.irs.gov)), and letter from Senators Baucus and Grassley to the IRS published as "Grassley, Baucus Urge Update to Charities' Tax Forms," Document 2007-12969, 2007 *Tax Notes Today* 104-41.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
1a	Number of members of the governing body (also on Part I line 3)
1b	Number of independent members of the governing body (also on Part I line 4)
2	Statement and disclosure on Schedule O whether any officer, director, trustee or key employee had a "family" or "business" relationship with any other officer, director, trustee or key employee. Compare information required to be disclosed on Schedule L by Part IV lines 28a, b, c.
3	Statement and disclosure on Schedule O whether the organization delegated control over management duties customarily performed by or under the direction of officers, directors or trustees to a management company or other person.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
4	Statement and disclosure on Schedule O of any significant changes to the governing documents.
5	Statement and disclosure on Schedule O whether there was any material diversion of assets.
6	Statement and whether the organization has members or stockholders and disclosure on Schedule O of the circumstances, process or changes.
7	Statement whether the organization has members, stockholders, or other persons who may elect one or more members of the governing body, and/or whether any decisions of the governing body are subject to approval by members, stockholders or other persons, and disclosure on Schedule O of the circumstances, process or changes.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
8	Statement whether the meetings held or written actions taken by the governing body or each committee authorized to act on behalf of the governing body (such as an "Executive Committee") were contemporaneously documented and, if not, explanation of the circumstances, process or changes
9	Whether the organization has local chapters, branches, or affiliates and, if so, whether the organization has written policies and procedures governing their activities to ensure their operations are consistent with those of the organization and, if not, disclosure on Schedule O of the circumstances, process or changes.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
10	Whether a copy of the Form 990 was provided to the organization's governing body before it was filed, <i>and</i> a description in Schedule O of the process, if any, which the organization uses to review the Form 990.
11	If different than the organization's mailing address, the name and address (in Schedule O) of any current officer, director, trustee; five highest paid employees; current or former officers, key employee, or highest paid employees who received more than \$100,000 of "reportable" (W-2 Box 5 or 1099-MISC Box 7) compensation from the organization or related organizations; or former directors or trustees that received in such capacity more than \$10,000 of reportable compensation from the organization and related organizations. (See Section A of Part VII.)



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
12	Statement whether the organization has a written conflict of interest policy and, if it does, whether officers, directors, trustees and key employees are required to disclose annually interest that could give rise to conflicts and a description in Schedule O of how the policy is regularly and consistently monitored and enforced. <b>Note:</b> There is no requirement that the policy itself must be disclosed.
13	Statement whether the organization has a whistle blower policy. <b>Note:</b> This may be a Sarbanes-Oxley compliance matter. Also <b>Note:</b> If there is a whistle blower policy, the Form 990 does not require its disclosure. Also <b>Note:</b> This question does not ask if there is a <i>written</i> whistle blower policy.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
14	Whether the organization has a written document retention and destruction policy. Note: This may be a Sarbanes-Oxley compliance matter. Also Note: If there is such a written policy, the Form 990 does not require its disclosure.
15	Disclose whether the process for determining the compensation of the CEO, Executive Director, or top management official, or other officers or key employees of the organization included a review and approval by independent persons, comparability data, and “contemporaneous substantiation of the deliberation and decision”, as well as a description in Schedule O of the process (apparently whether or not it included the foregoing factors).



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
16	Disclose whether or not the organization invested in, contributed assets to, or participated in a “joint venture or similar arrangement” with a <i>taxable</i> entity during the year and, if it did, a statement whether the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements “under applicable Federal tax law,” and took steps to “safeguard the organization’s exempt status” with respect to such arrangements. <b>Note:</b> Form 990 does not require disclosure of the written policies or procedures.
17	List states with which a copy of the Form 990 must be filed (usually includes at least all states with which the organization is registered to solicit contributions).



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
18	A reminder that the Internal Revenue Code requires all exempt organizations to make its Internal Revenue Service exemption application (Form 1023, or Form 1024, if filed on or after July 15, 1987 or otherwise available), its Form 990, and in the case of a 501(c)(3) organization its Form 990T (Unrelated Business Taxable Income) available for review or copying upon request by any person. This informational question asks whether this is done on the organization's website, another's website, upon request.
19	Disclosure in Schedule O whether, and if so, how) the organization makes its governing documents, conflict of interest policies, and financial statements available to the public. <b>Note:</b> This is not a question requiring a "yes" or "no" answer, but a requirement that a separate statement be made in Schedule O.



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## Highlights: Form 990 Part VI (Governance, Management and Disclosure)

Line	Information Requested
20	State the name, physical address, and phone number of the person who possesses the book and records of the organization.



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## Highlights: Form 990 Part VII (Compensation) Form 990 Schedule J (Compensation)

**Note:** This is very important information that ties to several other questions and disclosures in the Form 990



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## Form 990 Part VII Section A Information on Compensation

Name/Title	Average Hours Per Week	Position (Individual Director or Trustee; Institutional Trustee; Current Officer, Key Employee, One of Five Highest Paid Employees; Former Officer, Key Employee, Highest Paid Employee, Director or Trustee)	Reportable Compensation (W-2 or 1099-MISC) from Organization	Reportable Compensation (W-2 or 1099-MISC) from Related Organizations	Estimated Amount of Other (Not Reported on W-2 or 1099-MISC) Compensation from the Organization and Related Organizations
Current officers, directors, trustees (whether individuals or organizations) and "key employees" <sup>1</sup> regardless of amount of compensation (enter -0- if no compensation was paid).					

<sup>1</sup>A "key employee" is a person (other than an officer, director or trustee as designated in the organization's governing documents) who has responsibilities, powers or influence like those of officers, directors or trustees, including a person who manages a discrete segment of activity of the organization that represents a substantial portion of the activities, assets, income or expenses of the organization, as compared to the organization as a whole.



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## Form 990 Part VII Section A Information on Compensation

Name/Title	Average Hours Per Week	Position (Individual Director or Trustee; Institutional Trustee; Current Officer, Key Employee, One Of Five Highest Paid Employees; Former Officer, Key Employee, Highest Paid Employee, Director or Trustee)	Reportable Compensation (W-2 or 1099-MISC) from Organization	Reportable Compensation (W-2 or 1099-MISC) from Related Organizations	Estimated Amount of Other (Not Reported on W-2 or 1099-MISC) Compensation from the Organization and Related Organizations
Five current highest compensated employees (other than an officer, director, trustee or key employee listed above) who received reportable compensation (W-2 Box 5 and for Form 1099-MISC Box 7) of more than \$100,000 for the organization and related organizations.					



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## Form 990 Part VII Section A Information on Compensation

Name/Title	Average Hours Per Week	Position (Individual Director or Trustee; Institutional Trustee; Current Officer, Key Employee, One Of Five Highest Paid Employees; Former Officer, Key Employee, Highest Paid Employee, Director or Trustee)	Reportable Compensation (W-2 or 1099-MISC) from Organization	Reportable Compensation (W-2 or 1099-MISC) from Related Organizations	Estimated Amount of Other (Not Reported on W-2 or 1099-MISC) Compensation from the Organization and Related Organizations
Former officers, key employees, or highest compensated employees (determined by reference to prior Form 990) who received more than \$100,000 in reportable compensation from the organization and any related organization.  Also complete Schedule J for such persons (Part VII Sec. A Question 3).*					



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## Form 990 Part VII Section A Information on Compensation

Name/Title	Average Hours Per Week	Position (Individual Director or Trustee; Institutional Trustee; Current Officer, Key Employee, One Of Five Highest Paid Employees; Former Officer, Key Employee, Highest Paid Employee, Director or Trustee)	Reportable Compensation (W-2 or 1099-MISC) from Organization	Reportable Compensation (W-2 or 1099-MISC) from Related Organizations	Estimated Amount of Other (Not Reported on W-2 or 1099-MISC) Compensation from the Organization and Related Organizations
Former directors or trustees who received in that capacity more than \$10,000 of reportable compensation from the organization and related organizations.					
Also complete Schedule J for such persons (Part VII Sec. A Question 3).*					

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## Form 990 Part VII Section A Information on Compensation

Name/Title	Average Hours Per Week	Position (Individual Director or Trustee; Institutional Trustee; Current Officer, Key Employee, One Of Five Highest Paid Employees; Former Officer, Key Employee, Highest Paid Employee, Director or Trustee)	Reportable Compensation (W-2 or 1099-MISC) from Organization	Reportable Compensation (W-2 or 1099-MISC) from Related Organizations	Estimated Amount of Other (Not Reported on W-2 or 1099-MISC) Compensation from the Organization and Related Organizations
Also complete Schedule J for any person listed above whose sum of reportable compensation from the organization and related organizations is greater than \$150,000 (Part VI Sec. A Question 4).*					

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## Form 990 Part VII Section A Information on Compensation

Name/Title	Average Hours Per Week	Position (Individual Director or Trustee; Institutional Trustee; Current Officer, Key Employee, One Of Five Highest Paid Employees; Former Officer, Key Employee, Highest Paid Employee, Director or Trustee)	Reportable Compensation (W-2 or 1099-MISC) from Organization	Reportable Compensation (W-2 or 1099-MISC) from Related Organizations	Estimated Amount of Other (Not Reported on W-2 or 1099-MISC) Compensation from the Organization and Related Organizations
Also complete Schedule J for any person listed above who received or accrued compensation in any amount from any unrelated organization for services rendered to the organization.*					



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## SCHEDULE J PART I INFORMATION REQUIRED FOR EACH PERSON LISTED ABOVE (WITHOUT REGARD TO COMPENSATION)

Part I Line	Information Required
1a	<p>Disclose and provide relevant information (in Part III of Schedule J) if the organization provided to any listed person any of the following:</p> <ul style="list-style-type: none"> <li>▪ First-class or charter travel</li> <li>▪ Travel for companions</li> <li>▪ Tax indemnification and gross-up payments</li> <li>▪ Discretionary spending account</li> <li>▪ Housing allowance or residence for personal use</li> <li>▪ Payments for business use of personal residence</li> <li>▪ Health or social club dues or initiation fees</li> <li>▪ Personal services (e.g., maid, chauffeur, chef)</li> </ul>



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## Schedule J Part I Information Required For Each Person Listed Above (Without Regard To Compensation)

Part I Line	Information Requested
1b	If any of the above was provided to any listed person, disclose whether the organization follows a written policy regarding payment or reimbursement or provision of the expenses described above, or if it does not have such a written policy, explain.
2	Disclose whether the organization required substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees and the CEO/Executive Director regarding the above items. <b>Note:</b> The value of unsubstantiated items is generally taxable income that must be included in a W-2 or 1099-MISC.



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## Schedule J Part I Information Required For Each Person Listed Above (Without Regard To Compensation)

Part I Line	Information Requested
	<p>Disclose whether the organization used any of the following to establish compensation of the CEO/Executive Director:</p> <ul style="list-style-type: none"> <li>▪ Compensation committee</li> <li>▪ Independent Compensation Consultant</li> <li>▪ Form 990 of other organizations</li> <li>▪ Written employment contract</li> <li>▪ Compensation study or survey</li> <li>▪ Approval by the board or compensation committee</li> </ul>



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## Schedule J Part I Information Required For Each Person Listed Above (Without Regard To Compensation)

Part I Line	Information Requested
4	Disclose whether any person listed above in Schedule A of Part VII received a severance or change of control payment; participated in, or received payment from, a supplemental nonqualified retirement plan; or participated in, or received payment from, an equity-based compensation arrangement. If any of these occurred, provide the applicable amounts for each person.
5	Disclose whether and describe the compensation of any person listed above that was contingent on revenues of the organization or any related organization.



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## Schedule J Part I Information Required For Each Person Listed Above (Without Regard To Compensation)

Part I Line	Information Requested
6	Disclose whether and describe the compensation of any person listed above that was contingent on the net earnings of the organization or any related organization.
7	Disclose whether and describe any non-fixed payments to any person listed above that was not described in the preceding lines 5 and 6.
8	501(c)(3) and 501(c)(4) organizations: Describe any compensation reported in Part VII above that was paid or accrued pursuant to a first-time contract with a person not previously an officer, director, substantial contributor, or person of substantial influence (i.e., not a “disqualified person” under the Section 4958 “excess benefit” rule).



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**\* Additional Schedule J Part II Information Required For Each Person Listed Above Whose Compensation Is Required To Be Reported In Schedule A:**

- Name
- Base Compensation (W-2 or 1099)
- Bonus and Incentive Compensation (W-2 or 1099)
- Other Compensation (W-2 or 1099)
- Deferred Compensation
- Nontaxable Benefits
- Total of Above
- Prior Year Compensation as Reported in 990 or 990EZ



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**Maintain Your Tax Exemption:  
Prepare Now for the New IRS Form 990**



# Highlights Form 990 Schedule K



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## Phase-in of new tax-exempt bond reporting requirements

- Only limited identifying information regarding bond issues must be completed for 2008
- Much more detailed reporting required for 2009
- More detailed reporting is optional for 2008
- Reflects an acknowledgment of the burden of the new tax-exempt bond reporting requirements
- Complying with detailed requirements in 2009 will as a practical matter require implementation of new procedures now



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## Schedule K: Transitional Relief

- Detailed reporting is required only for bonds issued after 2002
- Note that the new requirements appear to apply to bonds that may be deemed to be “reissued” for tax purposes but not state law purposes
- Again, reflects an acknowledgment of the burden of the new tax-exempt bond reporting requirements



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## Schedule K Stated Purposes for New Requirements

- “The IRS is aware of significant noncompliance with recordkeeping and record retention requirements relating to tax-exempt bonds issued by or for the benefit of section 501(c)(3) organizations. This has made it difficult for the IRS to determine whether the bonds continue to remain qualified throughout their life. The IRS is also concerned about the investment of proceeds that might circumvent existing arbitrage rebate requirements. As a result, the IRS created the Schedule K, Supplemental Information on Tax-Exempt Bonds.”



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## Schedule K: Overview of Changes from Discussion Draft

- In general, tone is less enforcement focused, but IRS Tax Exempt Bond Director has indicated that Form 990 information probably will be used to select bonds for examination
- Deletes detailed requirements relating to compensation paid to third parties
- Continued heavy focus on adoption and implementation of tax-exempt bond compliance procedures



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## Schedule K: Part I

- Only Part I is required for 2008 (in addition to line 24 of Part IV of the core form)
- In general, requires only basic identifying information that is available as of the date of issuance
- One exception is information regarding whether bonds are defeased, which requires information after the date of issuance
- Inclusion of defeasance information in Part I is a change from the discussion draft, any may indicate a particular IRS focus on defeased bonds



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## Schedule K: Part II Proceeds

- New Schedule K retains the requirement in the discussion draft of detailed reporting of use of proceeds (use for capital expenditures, working capital expenditures, costs of issuance, reserve funds and refundings)
- Most notable are additional questions relating to “allocation of bond proceeds”
- Line 10: “Has the final allocation of bond proceeds been made?”
- Line 11: “Does the organization retain books and records to support the final allocation of bond proceeds?”



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## Schedule K, Part II Proceeds – Allocation Procedures

- Strongly suggests the need for a formalized “project completion review” or “bond proceeds spending review” procedure
- Bond allocation procedures need to take into account the key time limit set forth in the regulations
- Treas. Reg. §1.148-6(d)(3): “An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier.”



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## Schedule K, Part II Proceeds

- Line 4: “Unspent Proceeds” – may be an item of particular focus to IRS in selecting bonds for examination
- Line 6: “Working Capital Expenditures” may raise difficult tracing and interpretive questions



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## Schedule K, Part III Private Use

- Detailed reporting of private use may be the most burdensome aspect of Schedule K
- Appears to contemplate annual reporting of the amount of private use, even if less than permitted de minimis amount (e.g. 5%)



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## Schedule K: Part III Private Business Use Deletion of “Safe Harbor” Reporting

- The discussion draft would have required detailed reporting regarding whether contracts for use of financed property comply with IRS safe harbors (Rev. Procs. 97-13 and Rev. Proc. 97-14)
- The new form deletes reporting referencing private use safe harbors
- Instead, the new form asks “Does the organization routinely engage bond counsel or other outside counsel to review any management or service contracts or research agreements relating to financed property?”
- In other words, the new form attempts to focus on procedures used to take into account safe harbors, rather than on actual safe harbor compliance



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## Schedule K Part III Private Use – Procedures

- Line 7: “Has the organization adopted management practices and procedures to ensure post-issuance compliance of its tax-exempt bond liabilities?”
- Plainly intended to send a message that tax-exempt bond compliance policies should be adopted



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## Schedule K, Part IV Arbitrage

- New addition from discussion draft
- Overlaps in part with Form 8038-T reporting
- Particular focus on detailed reporting relating to interest rate hedges and guaranteed investment contracts
- Asks whether regulatory fair market value safe harbor for GICs was met
- Asks whether rebate exception was met



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# Form 990 Part VII Section B Information Required For Independent Contractors

List name, business address, description of services and compensation of five highest compensated independent contractors that received more than \$100,000.



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## SAMPLE QUESTIONNAIRE FOR DIRECTORS, TRUSTEES, OFFICERS AND KEY EMPLOYEES OF ORGANIZATION REPORTING ON [DRAFT] IRS FORM 990 FOR 2008<sup>1</sup>

A. Attached is a table of current directors, trustees, officers; the five other highest paid employees of this organization who received reportable compensation in this organization's last fiscal year ending [end of fiscal year beginning after December 31 of last year] of more than \$100,000 from this organization and all related organizations; former officers, key employees, or highest compensated employees who received more than \$100,000 in the last fiscal year from this organization and related organizations; and former directors or trustees who received in that capacity in the last fiscal year more than \$10,000 of reportable compensation from this organization and any related organizations.

B. Please advise us if you have any family or business relationship with any other officer, director, trustee or key employee:

- None  
 See Attached Explanation

C. Please advise if during the last fiscal year you had any direct business relationship with this organization (other than as an officer, director, trustee or employee)

- None  
 See Attached Explanation

D. Please advise if during the last fiscal year you had an indirect business relationship with this organization through ownership of more than 35% in another entity (individually or collectively) with any person on the attached list who received compensation from this organization.

- None  
 See Attached Explanation

<sup>1</sup> This sample questionnaire has been prepared by Foley & Lardner LLP. It is based on the December 19, 2007 draft Form 990 issued by the Internal Revenue Service and is subject to further instructions and guidance from the Internal Revenue Service. This document is not intended or written to be used as Federal tax advice, and it cannot be used by the recipient or any other taxpayer for the purposes of avoiding Federal tax penalties. Organizations monitoring conflict of interest policies may wish to modify this form to require current information rather than information just for the previous fiscal year.

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E. Please advise whether you had a family member who had a direct or indirect business relationship during the last fiscal year with this organization.

None

See Attached Explanation

F. Please advise whether you served as an officer, director, trustee, key employee, partner or member of an entity (or shareholder of a professional corporation) doing business with this organization.

None

See Attached Explanation



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## Health Care and Education

- Health Care and Education – Two dominant areas in the nonprofit/tax exempt sector
  - Education – relatively unchanged
    - Schedule E – Private school questionnaire. Same as private school questionnaire now part of Schedule A
      - Limited to questions on racially discriminatory practices policies.



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## Health Care and Education

### Health Care –New Schedule H -- Community Benefit Reporting

- Community Benefit has been standard for tax exemption for hospitals and other health care providers since 1969
  - Indicia of community benefit –
    - Community representative governing board
    - Open medical staff
    - Non-emergency care to all able to pay established charges
    - Emergency care to all regardless of ability to pay
    - Acceptance of Medicare, Medicaid and other government payment program beneficiaries
- Over past several years, IRS and others have been encouraging tax exempt health care provider to use Form 990 to trumpet community benefits and distinguish from for-profit providers
- But “unstructured” reporting has lead to lack of uniformity, comparability and transparency



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## Health Care and Education

- Transition Relief
  - For 2008, only Part IV, listing of facilities, required
    - Name and address of each facility
    - Description of type of facility
      - “Check the box” for general med/surg, critical care, teaching hospital, research facility, emergency care and other
- Scope – Definition of “Hospital”
  - Draft 990 instructions – Facilities that provide “hospital or medical care”
  - Instructions will define hospital by reference to state licensure or certification
  - Broader scope being considered
- Single entity, not systemwide, reporting
  - Supplemental information permits system information



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## Health Care and Education

- Charity Care – free or reduced-charge care to persons without means to pay – takes center stage.
  - Charity care reporting comes first in Part I
    - Based on Catholic Health Association model
      - Cost based measurement
  - Additional questions on charity care policy, other community benefit reporting
- Other Community Benefit Measures in Part I
  - Community health improvement services (e.g., free cholesterol screening)
  - Professional health education
  - Subsidized health services (e.g., neonatal ICU)
  - Research
  - Contributions to community groups



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## Health Care and Education

- Bad Debt and Medicare Shortfall
  - Bad debt excluded from Part I
    - Difficulty of classification
    - Substantial divergence of practices
  - Medicare shortfall also excluded from Part I
    - Lack of means testing
    - Similar divergence of practices
  - Separate reporting in Part III, with opportunity to describe why should be regarded as charity care



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## Health Care and Education

- “Community Building”
  - E.g., physical improvements, housing, economic development, leadership training and development – not health care *per se*
  - Not included in Part I – differs from CHA model
  - Separate reporting in Part II, with opportunity why should be regarded as community benefit



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## Health Care and Education

- Former Billing and Collection Table (Draft Part II)
  - Billing information (gross charges, discounts, net expected and fees collected) across payor types
    - “Universal opposition”
    - Inconsistent with record keeping practices
    - Billing table dropped
  - Collection practices now included in Part III (with bad debt and Medicare reporting)



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## Health Care and Education

- Management Companies and Joint Ventures – Part IV
  - Arrangements with directors, officers, key employees and physicians
  - Why limit to health care entities
    - Uniqueness of relationship with medical staff physicians
    - Continued study for other types of organizations
  - Increased threshold from 5% to 10%
- Supplemental Information -- Part VI
  - Explanation for bad debt and Medicare shortfall as charity care
  - Explanation for “community building” as community benefit
  - Relationship to and role within system



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Maintain Your Tax Exemption:  
Prepare Now for the New IRS Form 990



## Questions & Answers



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