



# IRS Form 990

## Preparing For The New Reporting Requirements

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# What is the Form 990?

1. Annual information return filed with IRS
  - Principal way IRS gathers information about tax-exempt organizations
2. Not a “tax” return – no tax due
  - Separate form (990-T) used to report taxable income
  - 990-T publicly available for returns filed after 8/17/06
3. Report financial, programmatic, compensation information
4. Not just for numbers
  - Ubiquitous “describe” and “explain”
  - Schedule O – Required
5. Requires detailed self-reporting on
  - Activities in furtherance of exempt purposes
  - Changes in activities and governing documents
  - Governance, financial transactions among insiders, compensation
  - Community benefit, bonds and joint ventures
  - Policies and procedures within the organization
  - Disclosure of key governance, financial and mission policies
6. Publicly available – sought by and relied on by media, state regulators, donors
  - [www.guidestar.org](http://www.guidestar.org)

# IRS Stated Reasons for Change

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

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

# New Form 990 – Significant Revision

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

# New Form 990 – Significant Revision

- Effective for tax years that begin in 2008
  - Most fiscal year organizations will first file in 2010 for FY2009
- Phase in for smaller organizations (may be relevant to related entities)
  - Filing thresholds for Form 990EZ will be increased
    - <2.5MM in assets and <1MM in gross receipts for 2008
    - <1.25MM in assets and <500K in gross receipts for 2009
    - <500K in assets and <200K in gross receipts for 2010 and later years
    - <25K in gross receipts will file e-postcard for years beginning in 2007
    - No activity - file e-postcard
- Phase in for certain schedules
  - 2 year phase in:
    - Schedule H – Hospital
    - Schedule K – Tax Exempt Bonds

# Form 990 Core Form and 16 Schedules

- Form 990 Core Form – 11 part
- Schedules
  - A. Public charity status and public support
  - B. Schedule of contributors
  - C. Political campaign and lobbying activities
  - **D. Supplemental financial statements**
  - E. Schools
  - F. Activities outside the U.S.
  - G. Fundraising or gaming activities
  - **H. Hospitals**

# Form 990 Core Form and 16 Schedules

- Form 990 Core Form – 11 part
- Schedules (continued)
  - I. Grants and other assistance to organizations, governments and individuals in the U.S.
  - **J. Compensation**
  - **K. Tax-exempt bonds**
  - **L. Transactions with interested persons**
  - M. Non-cash contributions
  - N. Liquidation, termination, dissolution or significant disposition of assets
  - O. Supplemental information
  - **R. Related organizations and unrelated partnerships**

# Focus on: Core Form

## Part I – Summary

- “Snapshot” activities and governance, comparative financial information (revenues, expenses, assets, liabilities and net assets)

## Part III – Statement of Program Service Accomplishments

- Reporting new, on-going and discontinued exempt purpose achievements and related revenues and expenses
- Describe exempt purpose achievements for the organization
  - Three largest program services by expenses
- Describe program service accomplishments through specific measurements
- Other program services can be reported in Schedule O
- Activity codes have been added (not required for 2008)

# Focus on: Core Form

## Part IV – Checklist of Required Schedules

- Determine what schedule must be completed and filed as part of the 990.
  - 37 yes/no questions

## Part V – Statement Regarding Other IRS Filings and Tax Compliance

- Report compliance with other Federal tax reporting and substantiation requirements
  - Number of information returns (1099s, 1098s, W-2s)
  - Number of employees (calendar year)
  - Tax shelter reporting
  - Contribution and donation reporting

# Focus on: Core Form

## Part VI – Governance, Management and Disclosures

*The IRS indicated that a well governed organization should be transparent and have code of ethics and whistleblower policy, fundraising policy, financial audits, written compensation practices and a document retention policy.*

- Detail about governing body (number, documentation of meetings, approval of decisions)
- Disclosure of family and business relationships among officers, trustees, key employees
- Existence of policies: conflict of interest (COI), whistleblower, document retention, joint ventures
- Description of process used to review 990 (Schedule O)
- Description of whether organizations make available (how) its governing documents, COI and financial statements available to the public (Schedule O)

# Focus on: Core Form

## Part VII – Compensation and Schedule J

- The following individuals must be reported:
  - All voting directors/trustees
  - All officers (must report CEO and CFO)
  - Key employees
  - 5 highest compensated employees (HCE) (>\$100,000)
  - Former officers, key employees and HCE's who received >\$100,000 and not employed at any time during the year
  - Former directors/trustees who received >\$10,000
- “Key employee”
  - >\$150,000 in reportable compensation and
  - Has responsibilities similar to officers, directors and trustees or
  - Manages/controls 10% of the organization's assets, income, expenses, capital budgets or compensation and
  - Limited to 20 highest compensated

# Focus on: Core Form

## Part VII – Compensation and Schedule J

- “Former” – 5 year look back period
- Compensation from all related organizations is included to determine reporting thresholds
- Compensation reported based on calendar year – W-2, 1099
- Compensation to the 5 highest paid independent contractors (>\$100,000)

# Focus on: Schedule J – Compensation Information

## Schedule J – Compensation Information

- Part I – Questions regarding compensation
  - Pointed questions about benefits the IRS regards as questionable:
    - First class and companion travel
    - Housing allowances and residences for personal use
    - Club dues, personal chefs, maids, chauffeurs
    - Tax indemnifications and gross-up payments
    - Discretionary spending accounts
    - Prior approval and substantiation requirements of expense reimbursements
    - Basis and process for setting compensation
    - Compensation committee, independent consultant, compensation survey, etc.
    - Severance payments, SERPs, etc.
    - Contingent and non-fixed compensation

# Focus on: Schedule J – Compensation Information

- Part II – Details of compensation
  - Report further compensation details for anyone listed on core form who received more than 150K plus any former officer, trustee, key employee, highest compensated employee listed on core form
  - Breakdown required
    - Base salary
    - Bonus
    - Other Compensation (i.e. deferred compensation paid in current year)
    - Deferred compensation (when accrued, plus increases in value)
      - (Deferred compensation report twice – when earned and when paid)
    - Nontaxable benefits
    - Compensation reported on prior Form 990
- Part III – Describe and Explain
  - Explanatory narrative for potential problematic perks or structurally suspect compensation

Note: Instructions provide a compensation table to determine where, when and how to report various types of compensation on Part VII and Schedule J.

# Focus on: Core Form

- Part VIII – Statement of Revenues
  - Detail reporting of contributions and program service revenues
  - New categories for contributions
  - Business codes for program service and miscellaneous revenues
- Part IX – Statement of Functional Expenses
  - Additional expense categories added such as; advertising and promotion, information technology, royalties, travel and entertainment expenses for public officials
    - Miscellaneous/other expenses can not exceed 5% of the total expenses
- Part XI – Financial Statements and Reporting
  - Report the organization's method of accounting and other information regarding its compiled, reviewed or audited financial statements.
    - "No" answer - prepare explanation on Schedule O should be included

# Focus on: Schedule D – Supplemental Financial Statements

- Schedule provides details for certain items in Part X of the core form (balance sheet)
- Part I – Reconciliation of Donor Advised Funds Activity
- Part II – Conservation Easement Information
- Part III – Collection of Art, Historical Treasures, etc. Information
- Part IV – Reconciliation of Trust, Escrow and Custodial Account Activity
- Part V – Reconciliation of Endowment Fund Activities and Other Information
- Part VI – Land, Building and Equipment Investment Details
- Parts VII & VIII – Investment Information
- Parts IX & X – Description of Other Assets and Liabilities
- Parts XI, XII & XIII – Reconciliation of Form 990 to Financial Statements
  - Net assets, revenues and expenses  
(not required if financial statements are not audited or a group return)

# Focus on: Schedule D – Supplemental Financial Statements

- Part XIV – Supplemental Information
  - Include the text of the FIN 48 footnote in the organization's financial statements
  - FIN 48 requires audit recognition of material uncertain income tax positions (those not more likely than not to be sustained if the organizations were audited by the IRS or another taxing authority).
  - Exemption itself is a tax position. Other significant tax positions include whether a stream of income is UBIT and the related expense allocation is appropriate.

# Focus on: Schedule H - Hospitals

- Report information for an organization that operates one or more facilities that are licensed, registered or similarly recognized by a state as a hospital.
- Phase in 2008 form only requires information about facilities (Part V). All other parts are optional for 2008 and required for 2009.
- Part I – Charity Care and Community Benefits
  - Requires hospitals to quantify the financial value of community benefit
  - Policy describing how organizations provide free or discounted care to those who meet policy criteria
  - Adopts Catholic Health Association reporting model: charity care; means-tested government programs; research; training; education

# Focus on: Schedule H - Hospitals

- Part I – Charity Care and Community Benefits (continued)
  - Standards used for free or discounted care (Federal Poverty Level)
  - Provision for “medically indigent”
  - Budgeted amounts and excess over budget
  - Denial of care due to budget limits
  - Annual community benefit reporting
  - Charity care does not include
    - Bad debts, Medicare shortfalls, Medicaid and other means tested shortfalls and contractual adjustments.

# Focus on: Schedule H - Hospitals

- Part I – Charity Care and Community Benefits (continued)
  - The community benefits table

7 Charity Care and Certain Other Community Benefits at Cost						
Charity Care and Means-Tested Programs	(a) Number of activities or programs (optional)	(b) Persons served (optional)	(c) Total community benefit expense	(d) Direct offsetting revenue	(e) Net community benefit expense	(f) Percent of total expense
<b>a</b> Charity care at cost (from worksheets 1 and 2) . . . . .						
<b>b</b> Unreimbursed Medicaid (from worksheet 3, column a) . . . . .						
<b>c</b> Unreimbursed costs – other means-tested government programs (from worksheet 3, column b) . . . . .						
<b>d</b> Total Charity Care and Means-Tested Programs . . . . .						
<b>Other Benefits</b>						
<b>e</b> Community health improvement services and community benefit operations (from worksheet 4) . . . . .						
<b>f</b> Health professions education (from worksheet 5) . . . . .						
<b>g</b> Subsidized health services (from worksheet 6) . . . . .						
<b>h</b> Research (from worksheet 7) . . . . .						
<b>i</b> Cash and in-kind contributions to community groups (from worksheet 8) . . . . .						
<b>j</b> Total Other Benefits . . . . .						
<b>k</b> Total (line 7d and 7j) . . . . .						

- Instructions to Form 990 provide worksheets to assist in completing Item 7 lines A – K

# Focus on: Schedule H - Hospitals

- Part II – Community Building Activities
  - Cost of organization activities that protect or improve the community's health or safety
    - Physical improvements and housing
    - Economic, leadership and workforce development
    - Community support
    - Environmental improvements
- Part III – Bad Debts, Medicare and Collection Practices
  - Report bad debts under HFMA policy statement #15?
  - Bad debts at cost (RCC formulation)
  - Bad debts attributed to charity care and rationale for including in community benefit
  - Financial statement footnote on bad debts
  - Medicare shortfall and rationale for including in community benefit
  - Credit and collection policy and procedures related to patients that qualify for charity care or financial assistance.

# Focus on: Schedule H - Hospitals

- Part V – Management Companies and Joint Ventures
  - Any partnership or corporation in which an organization is equity owner, or any management company which meets the following criteria:
    - Current ODTKEs and physicians with staff privileges own in aggregate >10% of profits of p/s or stock of corporation, and
    - Provides management services used by the organization in providing medical care, or
    - Provides medical care, or
    - Owns or provides property used by the organization or by others to provide medical care
  - Exclude publicly traded entities and entities where all income is passive investment income from interest or dividends

# Focus on: Schedule H – Hospitals

- Part V – Facility Information
  - This part is required for 2008
  - List all facilities' names and addresses that are licensed, registered or similarly recognized as a healthcare facility under state law
  - Identify the number of each type of facility
- Part VI – Supplemental Information (**Describe and explain**)
  - Standards for charity care
  - Charity care footnote from financials
  - Why Medicare shortfalls should be community benefit
  - Collection practices for charity care patients
  - Community needs assessment process
  - Patient Education and Eligibility of Assistance
  - Geographic and demographic “community”
  - How community building activities promote health
  - Describe how the organization furthers its exempt purpose by promoting the health of the community
  - Roles of constituent members of health system
  - States where file community benefit report

# Focus on: Schedule K – Tax-Exempt Bonds

- New Schedule K requires significantly more detail than current Form 990
- Phase in: 2008 form requires only identifying information about bond issues (Part I). All other parts (Parts II – IV) are optional for 2008 and required for 2009.
- Reporting required only for bonds issued after 2002
- Reporting on bonds outstanding at the last day of the year <\$100,000

# Focus on: Schedule K – Tax-Exempt Bonds

- Reporting required in four areas:
  - General information (issuer name, date, purpose, etc.)
  - Specific uses of proceeds of each issue (proceeds used for capital expenditures, reserve fund, costs of issuance, etc.)
  - Private use:
    - Was property financed by the issue subject to certain types of private use (leases, management or service contracts, research agreements, etc.)?
    - Percentage of bond-financed property subject to private use, broken down between unrelated business taxable income (UBTI) and other types of private use
  - Arbitrage-related matters (guaranteed investment contracts, swaps, rebate compliance)
- Private use questions will require looking beyond bond transcript or other basic records:
  - Review uses of property financed or refinanced by outstanding post-2002 bond issues and calculate percentage of each issue subject to private use

## Focus on: Schedule L – Transactions with Interested Persons

- Schedule L consolidates reporting of transactions with “interested persons” (officers, trustees, key and highly compensated employees, substantial contributors):
  - Loans to and from interested persons
  - Grants or assistance benefiting interested persons
  - Business transaction involving interested persons
  - “Excess benefit transactions”: paying more than fair market value or reasonable compensation
- Not required to disclose substantial contributor’s name
- Reporting thresholds
  - All excess benefit transactions must be reported
  - Business transactions <\$10,000 or 1% of revenues
  - Aggregated business transactions <\$100,000

# Focus on: Schedule R – Related Organizations

- Schedule R was added to capture the increasingly complex organization structures of tax exempt organizations and improve transparency
- The following organizations must be disclosed
  - Related disregarded entities
  - Related tax-exempt organizations
  - Related and unrelated partnership
  - Related taxable corporations or trusts
- All organizations must disclose the following:
  - Name, address and EIN
  - Primary activity
  - Legal domicile

# Focus on: Schedule R – Related Organizations

- Additional information for each related organization (based on entity type)
  - Total income
  - Share of income
  - Share of year end assets
  - Public charity status
  - Type of entity (C, S corp. or trust)
- Transactions with related organizations must be disclosed including:
  - Interest, annuities, royalties or rent from controlled entities
  - Gifts, grants or capital contributions
  - Loans or loan guarantees
  - Leases
  - Performance of services, sharing of facilities, equipment, employees
  - Other transfers of cash or property

# Wrap up

- Revised Form 990 reporting requirements
  - Will require new systems to collect information
  - Will require review, modification and/or development of policies
- Inventory and list by responsible party to track, monitor and gather information required by new Form 990
- Schedule H – Hospitals
  - Practice in 2008 preparing form and worksheets
- Important to be aware of information reported about your organization that will be in the public domain once filed
- Resource – 990 Hospital Coalition
  - [www.990forhospitals.org](http://www.990forhospitals.org)
  - [www.irs.gov/charities](http://www.irs.gov/charities)
  - [www.fdcpa.com/tax/0808taxnews-form-990.htm](http://www.fdcpa.com/tax/0808taxnews-form-990.htm)

# Questions