



New Form 990: What you need to know

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Questions you may need to review with your Board, managers, and staff – NOW



The New Form 990 contains a Governance, Management, and Disclosure Section (Part VI of the core form). This section brings up some very important questions for your board, managers, and staff. It will change the way you ask board members to share information about their other responsibilities. You will need to look closely at these questions before the end of the fiscal year:

How Many of Your Voting Board Members Are Independent?

In Questions 1a and b, Part VI of the New Form 990, and on the first page of the core form, the IRS is concerned with the governing body of the organization; how many voting members are included in the governing body, and whether or not those members are independent.

Independence requires three circumstances. For a voting member to be independent, the IRS requires a three part test be fulfilled throughout the organization's tax year:

1. The member was not compensated as an officer or other employee of the organization or of a related organization.

2. The member did not receive total compensation or other payments exceeding \$10,000 for the year from the organization or from a related organization as an independent contractor, other than reimbursement of expenses or reasonable compensation.

3. Neither the member, nor any family member of the member, was involved in a transaction with the organization that is required to be reported in Schedule L (Transactions with Interested Persons).

Please note that board members are still independent if they are also a donor, or part of a religious order that has taken a bona fide vow of poverty, or are a member of the charitable class that your organization serves.

This is a significant change from the old Form 990, which asked only for the total number of voting members.

Do You Have Conflicting Relationships?

The IRS is also concerned with the relationships between officers, directors, trustees, or key employees, and whether or not those relationships may be a conflict of interest (Part VI, Question 2 of the Form). While "relationships" are required to be disclosed in the old form, the definition of "business relationship" is now more clearly defined in the glossary of the new form.

This definition makes important distinctions between business transactions that are in the course of normal operations and special deals not normally available to the general public. Business transactions that are above \$10,000 and are offered at rates not available to the general public must be reported. The other important element is ownership and control of businesses (both for-profit and nonprofit).

Policies and Practices Encouraged by the IRS

The IRS asks about certain governance practices and policies that are encouraged, but not officially mandated. Regardless of mandate, many are good policies and the public will be able to see the answers to these questions. There also is a good chance that this information would be used in some form of a compliance check by the IRS.



These policies and practices must be completed and operating during this tax year. For example if you are not taking minutes this year, you will report that in the new 990. You must take action now to ensure that you can answer favorably to the new questions about policies and practices. A policy completed now is worth the correct answer on the new 990.

Other governance questions on Part VI of the New Form 990 include inquiries into the documentation of the governing board's minutes, the 990 review process, and questions on the organization's policies related to conflict of interest, whistleblowers, document retention and destruction, and executive compensation.

Are There Any Changes to Your Organizational Documents (e.g.: bylaws) ?

In Part VI, Question 4, the IRS also requires any significant changes to organizational documents be described in Schedule O of the Form. This is a change from the old form because the IRS now specifically defines what is considered significant document changes on page 3 of the instructions.

Do You Document Meeting Minutes?

Question 8 asks if the organization contemporaneously (within 60 days of the meeting) documented every meeting held or written action taken during the organization's tax year by its governing body and committees authorized to act on behalf of the organization.

Do You Have a Formal 990 Review Process?

Question #10 refers to the 990 review process, and requires all organizations to describe in Section O the process, if any, the organization uses to review the Form 990.

What is Your Conflict of Interest Policy?

Under Section B-Policies, the IRS requests information on the organization's written conflict of interest policy, annual disclosure requirements, and how compliance of the policy is monitored in questions 12, A-C. You can download a model policy at www.SmartGivers.org.

Do You Have Written Whistleblower and Document Retention Policies?

Questions 13 and 14 ask if your organization has a written whistleblower policy and a document retention policy. These policies will need to be adopted by the end of the fiscal year. You can download a model policy for each at www.SmartGivers.org.

How About Your Compensation Process?

Another significant change and new question to the 990 is the organization's specific process in determining compensation for the CEO, Executive Director, or top management. This is in Part VI, question 15 of the form.

The instructions ask whether the process includes a review and approval by independent persons, comparability data, and documentation and recordkeeping of the discussions and decision.