

Form 990 Executive Compensation Reporting – Prepare for Change

General Background

In June the IRS issued a discussion draft of a redesigned Form 990, the annual information return filed by tax-exempt organizations. In a background paper accompanying the redesigned form, the IRS described the Form 990 as the “primary tax compliance tool for tax-exempt organizations.” The IRS noted that States rely on the Form 990 for oversight and tax-filing purposes. Moreover, the public, media, researchers, and policymakers rely on it to obtain information about the tax-exempt sector generally and individual organizations specifically. Therefore, according to the IRS, the redesigned Form 990 is intended to:

- Enhance transparency to provide the IRS and the public with a realistic picture of the organization;
- Promote compliance by accurately reflecting the organization’s operations, enabling the IRS to efficiently assess the risk of noncompliance; and
- Minimize the burden on filing organizations by requiring additional information based only on specified indicators.

The redesigned Form 990 consists of a 10-page “core” form, including an initial summary page, and 15 possible schedules. The schedules required for each particular organization depend on the organization’s characteristics and activities.

The redesigned form is proposed for use in reporting for the 2008 taxable year (filings made in 2009). However, the IRS specifically asked for comments on the transition period for moving to the new form. Comments on this and other issues are due by September 14, 2007.

Executive Compensation Reporting

Compensation paid to executives of tax-exempt entities is a perennial topic of interest to the press and the public. In addition, since 2004, the IRS has focused on this area through the Exempt Organizations Division’s Executive Compensation Compliance Project. In March the IRS issued a report on the first two phases of this initiative. See Report on Exempt Organizations Executive Compensation Compliance Project – Parts I and II, March 2007, available through link at <http://www.irs.gov/charities/article/0,,id=169100,00.html>.

Compared to the existing Form 990, the redesigned form generally requires more information on the core form with respect to the compensation of officers, directors, and key employees, but uses a simpler measure of compensation, referred to as “reportable” compensation. In the case of an

employee, reportable compensation means Medicare wages reported on Form W-2. In the case of other service providers, such as directors, reportable compensation means nonemployee compensation reported on Form 1099-MISC. Reportable compensation from the organization and from any related organization must be listed.

Based on certain triggers, an organization might also be required to file a new Schedule J, showing additional detail on both taxable and nontaxable compensation. Schedule J must be filed, for example, if an executive has over \$150,000 reportable compensation or \$250,000 total compensation, or if any person listed on the core form has compensation from a source other than the organization or a related organization. Schedule J requires a seven-part breakout of compensation: (1) base compensation included in reportable compensation, (2) bonus and incentive compensation included in reportable compensation, (3) severance or change of control payments included in reportable compensation, (4) other amounts included in reportable compensation, (5) nonqualified deferred compensation not included in reportable compensation, (6) nontaxable welfare and fringe benefits, and (7) nontaxable expense reimbursements or allowances. In addition, Schedule J asks whether certain types of compensation arrangements are used, including supplemental nonqualified retirement plans, equity-based compensation, compensation based on revenues or net earnings, first-class travel, club dues, or use of a personal residence.

Attached to this Alert is a chart comparing the executive compensation reporting requirements for the current Form 990 and the redesigned Form 990. Although the IRS may make further changes to the Form 990 during the process of finalizing the redesigned form, tax-exempt organizations can expect expanded reporting of executive compensation, along with the additional recordkeeping required to comply with the enhanced reporting obligations.

Please contact any of the attorneys in our Employee Benefits and Executive Compensation Group if you have questions regarding this Employee Benefits Alert.

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FORM 990 EXECUTIVE COMPENSATION REPORTING COMPARISON OF REQUIREMENTS

Whose Compensation Is Reported	CURRENT FORM 990		DISCUSSION DRAFT FORM 990	
	Who Must Report	What Must Be Reported	Who Must Report	What Must Be Reported
Current officers, directors, trustees, and key employees	All organizations	(1) Name and address; (2) three-part breakout of compensation from organization ¹	All organizations	(1) Name and city/state of residence; (2) "reportable" compensation ² from organization and related organizations; (3) loans and other amounts owed to organization or related organizations ³

¹ The breakout consists of (1) salary, fees, bonuses, severance and deferred compensation paid in the current year; (2) deferred compensation (qualified and nonqualified), future severance benefits, and payments to welfare benefit plans; and (3) taxable and nontaxable fringe benefits and taxable expense allowances or reimbursements (e.g., housing, use of automobile, indemnification arrangements).

² "Reportable" compensation means an employee's Form W-2 Medicare wages or a nonemployee's Form 1099-MISC compensation. Medicare wages include some amounts that are not taxable income, such as vested nonqualified deferred compensation and elective contributions to a Section 401(k), 403(b) or governmental 457 plan.

³ Information on loans also must be provided on the new Schedule L of the redesigned Form 990.

Whose Compensation Is Reported	CURRENT FORM 990		DISCUSSION DRAFT FORM 990	
	Who Must Report	What Must Be Reported	Who Must Report	What Must Be Reported
Current officers, directors, trustees, and key employees, if receiving compensation from related organizations	All organizations	(1) Names of individuals and related organizations; (2) description of relationship; (3) three-part breakout of compensation ⁴	All organizations	Included above
Former officers, directors, trustees, and key employees, if receiving compensation	All organizations regardless of amount of compensation	(1) Name and address; (2) three-part breakout of compensation; ⁵ (3) loans and advances	All organizations if: (1) more than \$100,000 reportable compensation from organization and related organizations, in case of former employee; and (2) more than \$10,000 reportable compensation	(1) Name and city/state of residence; (2) reportable compensation ⁶ from organization and related organizations; (3) loans and other amounts owed to organization or related

⁴ See footnote 1.

⁵ See footnote 1.

⁶ See footnote 2.

Whose Compensation Is Reported	CURRENT FORM 990		DISCUSSION DRAFT FORM 990	
	Who Must Report	What Must Be Reported	Who Must Report	What Must Be Reported
			from organization and related organizations, in case of former director or trustee	organizations
Five highest paid non-key employees	Public charities and nonexempt charitable trusts if more than \$50,000 compensation from organization ⁷	(1) Name and address; (2) three-part breakout of compensation ⁸	All organizations if more than \$100,000 reportable compensation from organization and related organizations	(1) Name and city/state of residence; (2) reportable compensation ⁹ from organization and related organizations; (3) loans and other amounts owed to organization or related organizations

⁷ Schedule A of the current Form 990.

⁸ See footnote 1.

⁹ See footnote 2.

Whose Compensation Is Reported	CURRENT FORM 990		DISCUSSION DRAFT FORM 990	
	Who Must Report	What Must Be Reported	Who Must Report	What Must Be Reported
Supplemental compensation information¹⁰	N/A	N/A	Any organization if: (1) an officer, director, trustee, key employee, or highest paid non-key employee listed on core form has over \$150,000 reportable or \$250,000 total compensation; (2) any former officer, director, trustee or key employee is listed on core form; or (3) any person listed on core form has compensation from a source other than organization or related organization	(1) Name; (2) seven-part breakout of compensation; ¹¹ (3) whether certain types of compensation arrangements are used ¹²

¹⁰ New Schedule J of the redesigned Form 990.

¹¹ The breakout consists of (1) base compensation included in reportable compensation, (2) bonus and incentive compensation included in reportable compensation, (3) severance or change of control payments included in reportable compensation, (4) other amounts included in reportable compensation, (5) nonqualified deferred compensation not included in reportable compensation, (6) nontaxable welfare and fringe benefits, and (7) nontaxable expense reimbursements or allowances.

¹² The types of arrangements include supplemental nonqualified retirement plans, equity-based compensation, compensation based on revenues or net earnings, first-class travel, club dues, or use of a personal residence.