

Getting Familiar With the New 990 Fundraising Disclosures

by Catherine Oetgen

With the recent release of the redesigned Form 990, the Internal Revenue Service (IRS) has signaled its interest in increasing transparency in the nonprofit sector across a broad spectrum, from activities and operations to governance practices. Beyond just the changes in format, the revised Form 990 shows the IRS's increased focus on the activities of nonprofits, rather than just their financial disclosures as in the past. Tax-exempt organizations are advised that new reporting requirements may impact how they track and disclose many of their activities.

What are some of the major changes to the revised Form 990?

Major changes were made to the Form 990 as a whole. The new format is now composed of an 11-page core form with 16 schedules. The core form starts with a "snapshot" of the organization: it requires a brief summary of the organization's mission, governance structure and staff size, and unrelated business income and requires a breakdown of revenue and expenses (including professional fundraising expenses on Line 16). The entirety of the core form's second page focuses on the program service accomplishments of the organization—this page gives organizations a chance to champion their achievements over the year. Organizations are wise to take advantage of this opportunity which can serve as a good marketing and public relations tool. Specifically, the section requires detailed narrative information on an organization's three largest program services (measured by expenses) and asks for a detailed mission statement. An organization can also indicate here whether it has undertaken new programs or ceased (or significantly changed) existing programs.

A checklist of required schedules provides a centralized location for organizations to determine which of the 16 schedules they must complete. This section makes it easier for organizations to figure out which schedules apply and also gives the IRS and the public a one-page summary of the kind of activities the organization is engaging in, including its political campaign or lobbying activities, foreign activities, fundraising or gaming, grant making, certain compensation arrangements, transactions with insiders, major dispositions of assets, and relationships with other organizations.

The revised core form also covers new topics like governance and management (discussed in more detail below) and has greatly expanded reporting requirements pertaining to compensation of the organization's officers, directors, key employees, highest compensated employees and independent contractors (also discussed below). Other sections have not changed so dramatically. For instance, the core form's statement of revenue (Part VIII) generally reports the same information required on the previous version of the Form, but includes a few noteworthy changes, like requiring contributions to be broken down into six types, including the portion of amounts from fundraising events that comprise contributions. Similarly, the Form's statement of functional expenses (Part IX) is primarily the same as the previous Form and still requires 501(c)(3) and (c)(4) organizations to break out reported expenses by functional category, including program service, management and general, and fundraising. The balance sheet (Part X) also remains much the same, with the exception of a few revisions. Finally, a brand new short section on financial statements and reporting requires organizations to report on the method of

accounting and other information regarding whether financial statements were compiled, reviewed or audited by an independent auditor and whether the organization has an audit committee.

The schedules cover various areas of activity. Some disclosures have been carried over from the previous 990 version (like Schedule B requiring information on contributors which still is not available for public inspection) while others, like Schedule G (fundraising and gaming activities) and Schedule F (foreign activities), have been significantly overhauled or are brand new. The schedules are a move away from the unstructured attachments that were permitted in the past and entail more detailed reporting.

When is Schedule G (fundraising and gaming activities) triggered and what disclosures are required?

Schedule G requires organizations to report supplemental information on fundraising and gaming activities. Although many took the position during the public comment period that fundraising activities and gaming activities should be differentiated for purposes of reporting on the Form 990 because these activities are distinct, the final schedule combines reporting on both activities. However, the IRS does clarify for purposes of the Form 990 that the definition of “fundraising activities” does not include gaming (other than gaming that is incidental to a fundraising activity such as sweepstakes).

Schedule G is triggered if an organization reports more than \$15,000 in professional fundraising fees, more than \$15,000 in contributions and gross income from fundraising events or more than \$15,000 in income from gaming activities (like bingo, pull tabs, etc.). Unlike the previous version of the Form which required organizations to attach schedules to provide details related to amounts reported for special events and gaming, Schedule G imposes a more structured reporting format and asks new questions to gather information on special events and professional fundraising expenses and fees. The following discussion will focus on fundraising activity disclosures.

Generally, the schedule requires reporting on the following aspects of fundraising activity:

- Checkbox reporting on certain methods of fundraising, including mail or phone solicitations and special fundraising events.
- Disclosure of whether the organization had during the year any written or oral agreements in connection with fundraising activities with any individual. This would include disclosures of arrangements with an organization’s officers, directors or employees for fundraising services, *unless* the individual conducts the fundraising services solely in his or her capacity as one of the organization’s officers, directors or employees.

- Detailed reporting on up to ten of the organization’s highest paid professional fundraisers (whether individuals or entities) who were paid at least \$5,000 by the organization for professional fundraising services. This information is collected in chart form and requires: (i) a description of the activity (e.g., “consults on direct mail program”), (ii) an indication of whether the fundraiser had “custody or control” of the contributions, (iii) the gross receipts from the arrangement, and (iv) the amount paid to (or retained by) the fundraiser and the organization, respectively.
- Disclosure of all the states in which an organization is registered or licensed to solicit funds or has been notified of its exemption from registration or licensing.
- Disclosure of detailed financial information on an organization’s two largest fundraising events with gross receipts greater than \$5,000, as well as aggregate revenue and expense information on all other events with gross receipts exceeding the \$5,000 threshold, if any.

With respect to disclosure of a professional fundraiser’s fees, the reporting here will vary depending on whether the agreement includes payment of fundraising expenses (such as printing, paper, postage, mailing list rental, etc.). If the payment of expenses is distinguishable under the terms of the agreement, this amount must be reported on Schedule O and a description must be given regarding how the agreement distinguishes payments for services from expense payments or reimbursements. If there is no distinction between services and expenses in the agreement, then the entire amount must be included in the chart. The implication here is that organizations with agreements that do not break out expenses will appear to have higher fundraising fees when compared to other organizations that are able to break out expenses. To address this concern, organizations may want to either structure contracts to specifically and separately delineate fees and costs or consider including an explanation in Schedule O that describes the particular fee structure as a joint cost. The organization is also required to disclose on Schedule O if it enters into arrangements that are exclusively expense reimbursement arrangements and not for services.

What are other areas of significant change on the revised Form 990?

Core Form Part VI: Governance Disclosures: The core form contains a new section on governance and management practices. Although there is no statutory authority for requiring organizations to establish governance policies and procedures (a fact that is recognized by the IRS in the Form 990 instructions), the rationale behind these new questions is that well-governed organizations are more likely to comply with these newly enumerated best practices than those lacking strong governance controls. The implication is that by asking these questions and forcing organizations to answer “yes” or “no,” more organizations will consider adopting certain policies and practices. Time will tell whether what some have called a “behavior modification” approach by the IRS will in fact contribute to increased tax compliance by nonprofits or whether it will raise red flags for the IRS if an organization answers “no” to these governance and policies questions and trigger investigations or audits. These disclosures could also have an impact on an

organization's public perceptions—some charity watchdogs already plan to work these new governance disclosures into their rating systems.

Of note, the new governance section in Part VI of the core form requires disclosures on the number of “independent” Board members, family or business relationships among certain insiders and whether the organization has adopted policies on conflicts of interest, whistleblower protection, document retention and destruction and joint ventures. For an organization to check “yes,” the policies have to have been adopted within the tax year being reported. If the policies are adopted after the close of the tax year, it is suggested that the adoption be noted on Schedule O and asterisked with a reference next to the question in Part VI.

Schedule J: Compensation Disclosures: The IRS has dramatically overhauled compensation reporting requirements, now included in Part VII of the core form and on Schedule J. The IRS revised these sections with the goal of creating increased uniformity and transparency in relation to compensation reporting. To that end, organizations are required to provide a comprehensive breakdown on Schedule J of the compensation for certain individuals reported on the core form who exceed the reporting threshold amounts. Schedule J also prompts organizations to disclose whether it provides certain other benefits like first-class travel, gross-up payments, housing allowances and personal services (e.g., use of a chauffeur), whether it has written policies on expense reimbursement and substantiation requirements and whether it follows certain practices in establishing the CEO's compensation.

Schedule O: Catchall: Although many of the questions on the core form (and some questions on the schedules) are in yes/no format, Schedule O has been created to provide narrative information required for additional responses for specific questions. Schedule O serves as a kind of catchall for required information as well as information that organizations decide to share in an effort to supplement their answers to various questions and describe their operations and activities.

Tips on Getting Familiar with the Revised Form 990

- **Review the Form Now:** Organizations are encouraged to review the revised Form sooner rather than later to understand how the new reporting requirements will impact their disclosures in the upcoming tax year.
- **Put Tracking Systems and Procedures in Place to Capture New Information:** In many cases, the revised 990 will require organizations to disclose information that has not been previously reported. Organizations should determine what new information they must track (e.g. number of volunteers) and put systems in place to capture this information throughout the tax year.
- **Inform the Board:** The revised Form now requires organizations to disclose the process the organization uses to review the 990 and whether it was reviewed by the Board before it was filed. Although it may not be mandated by law for the full Board to review the 990,

the organization should decide ahead of time how it plans to address this issue, like delegating the responsibility to a Board committee and distributing a copy to the entire Board before filing.

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