



Are You Ready for the 990?

Association of Corporate Counsel Nonprofit Organizations Network
Legal Update
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Today's Discussion

- Understanding Your Audience
- 990 Fundamentals
- IRS Key Topics of Interest
- Managing 990 Preparation



990 Fundamentals

What is the Form 990?

The IRS Form 990 is a publicly available **information return** filed annually with the IRS by most tax-exempt organizations

Describes the organization's mission and activities, governance and operational information, and finances

Used by the IRS to monitor continued qualification for tax-exempt status and assessment of tax owed (if any); also functions overall as a compliance tool

990 Fundamentals

Public Disclosure Requirements

Organizations must make available for public inspection:

- Form 990
- Form 990-T (501(c)(3)s)
- Application for recognition of exemption

Forms 990 are also publicly available online

- IRS Tax Exempt Organization Search
- Third-party websites (e.g., Candid/Guidestar)

Who Is Looking at Your Form 990?

Regulators

- IRS
- State Charity Regulators
- State Attorneys General

Internal Stakeholders

- Board members
- Employees/Volunteers (current and potential)

News media

Funders

- Grantmaking organizations
- Individual donors

Charity rating organizations/nonprofit watchdogs

- Charity Navigator
- Candid (formerly Guidestar)
- GreatNonprofits
- Charity Watch
- Open Secrets

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Which Form 990?

Make sure you file the right Form 990 for your organization

- Form 990-N e-postcard for very small orgs – gross receipts of \$50,000 or less
- Form 990-EZ - gross receipts under \$200,000, total assets under \$500,000
- Form 990-PF for private foundations
- Form 990 for everyone else

Other Forms:

- 990-T (UBIT; 6033(e) proxy tax on lobbying and political activities)
- 1120-POL (political organization return; 527(f) tax)

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Due Dates and Extensions

The 15th day of the 5th month after the close of the organization's fiscal year

- May 15 for calendar year taxpayers

6-month extension available upon request

- Automatically granted
- Extends due date to November 15 for calendar year taxpayers
- **Must request** extension by initial filing deadline using Form 8868
- If taxes owed of \$500 or more, don't forget to pay estimated taxes quarterly
 - Form 990W worksheet can be used to calculate the estimated payments
- Consider state charity filing deadlines as well
 - Some states require a completed 990 with annual charitable solicitation registration filings and do not extend the filing due date

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Filing-related Penalties

Form 990 must be filed on time and must be materially complete and accurate

- Signed under penalties of perjury
- Materially incomplete may be deemed never filed at all

Penalties for late filing/failure to file

- \$20 per day, capped at the lesser of \$10,000 or 5% of gross receipts for the year
- \$100 a day, capped at \$50,000, for organizations with gross receipts in excess of \$1 million
- Can be waived for reasonable cause

Beware of auto-revocation

- Tax-exempt status automatically revoked if an organization fails to file the 990 three years in a row
- Particularly important for national organizations with local chapters or group exemption holders



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Key Parts of the Form 990

Main Form consists of 12 parts, accompanied by 16 schedules

Tell Your Story!

- Part I—Summary
- Part III—Statement of Program Service Accomplishments
- Schedule O—Supplemental Information

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Part I—Summary

- Recap of details included elsewhere in the Return (see the parentheticals after each line)
- Description of mission is critical!
- This section gives the public a quick snapshot of the organization’s activities

Part I Summary				
Activities & Governance	1	Briefly describe the organization's mission or most significant activities: _____		
	2	Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3	Number of voting members of the governing body (Part VI, line 1a)	3	
	4	Number of independent voting members of the governing body (Part VI, line 1b)	4	
	5	Total number of individuals employed in calendar year 2020 (Part V, line 2a)	5	
	6	Total number of volunteers (estimate if necessary)	6	
	7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	
b	Net unrelated business taxable income from Form 990-T, Part I, line 11	7b		
Revenue	8	Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9	Program service revenue (Part VIII, line 2g)		
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)		
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)		
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)		
	Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	
14		Benefits paid to or for members (Part IX, column (A), line 4)		
15		Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)		
16a		Professional fundraising fees (Part IX, column (A), line 11e)		
b		Total fundraising expenses (Part IX, column (D), line 25) ▶		
17		Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)		
18		Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)		
19	Revenue less expenses. Subtract line 18 from line 12			
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21	Total liabilities (Part X, line 26)		
	22	Net assets or fund balances. Subtract line 21 from line 20		

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Part III

- Identify the organization's mission and most significant program service accomplishments, measured by expenses
- Sections 4(a) to 4(c) describe those three largest programs, and then 4(d) is a lump sum of all other programs offered and their expenses/revenue
- Supplement responses in Schedule O

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Part III **Statement of Program Service Accomplishments**
Check if Schedule O contains a response or note to any line in this Part III

1 Briefly describe the organization's mission:
.....
.....
.....

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? **Yes** **No**
If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? **Yes** **No**
If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

4d Other program services (Describe on Schedule O.)
(Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

4e Total program service expenses ▶ _____

Form **990** (2020)

990 Fundamentals

Key Parts of the Form 990

Part IV—Checklist of Required Schedules

- Schedules A through R (not all will be applicable)

Part V—Statements Regarding Other IRS Filings and Tax Compliance

- Employment taxes
- UBIT
- Foreign bank accounts
- 4960 tax on compensation over \$1 million

990 Fundamentals

Key Parts of the Form 990

Part VI—Governance, Management, and Disclosure

- The Code generally does not grant the IRS the authority to regulate the governance and management policies of tax-exempt organizations
- IRS rationale for governance section: independent boards and well-defined governance and management policies increase likelihood of tax compliance, safeguarding of charitable assets, and serving of charitable interests

990 Fundamentals

Key Parts of the Form 990

Part VI—Governance and Management

- Number of independent directors?
- Family or business relationships with other directors, officers, key employees?
- Did the organization become aware during the tax year of a significant diversion of assets?
- Compensation approval process (rebuttable presumption of reasonableness)—describe in Schedule O
- Process used to review 990
 - Was a complete copy of the 990 provided to all members of the board before filing?
 - Describe in Schedule O



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Key Parts of the Form 990

Part VI—Governance and Management

- Does the organization have written policies on:
 - Conflicts of interest (and does the organization consistently monitor and enforce it?)
 - Whistleblowers
 - Document retention and destruction
 - Joint ventures (if applicable)

990 Fundamentals

Key Parts of the Form 990

Finances

- Part VII—Compensation of Officers, Directors, Trustees, Key Employees, Highest-Compensated Employees, and Independent Contractors
- Part VIII—Statement of Revenue
- Part IX—Statement of Functional Expenses
- Part X—Balance Sheet
- Part XI—Reconciliation of Net Assets
- Part XII—Financial Statements and Reporting

990 Fundamentals

Key Schedules

Schedule A—Public Charity Status and Public Support

Schedule B—Schedule of Contributors

- 501(c)(3)—Identify donor name and address, amount contributed—may redact for public disclosure
- 501(c)(4)—Only identify amounts contributed; donor name and address not required

Schedule C—Political Campaign and Lobbying Activities

- 501(c)(3) political activities and lobbying
- Other 501(c) political activities, including IRC 6033(e) proxy tax compliance

Schedule D—Supplemental Financial Statements

- Donor advised funds
- Endowment funds
- Investments (securities; program-related)
- Liability for uncertain tax positions (Former FIN 48)

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Key Schedules

Schedule F—Statement of Activities Outside the United States

Schedule G—Supplemental Information Regarding Fundraising or Gaming Activities

- Disclose arrangements with fundraisers
- Of key interest to state charity regulators

Schedule I—Grants & Other Assistance to Orgs, Governments, and Individuals in the U.S.

- Identify grant recipients by name, organization type, amount given
- NOTE: Do not include SSNs!

990 Fundamentals

Key Schedules

Schedule J—Compensation Information

- Identify certain “benefits of interest” if provided (e.g., first-class travel, companion travel, housing allowance or personal use residence, health/social club dues, tax gross-up payments) and any written policy regarding such benefits
- Provide narrative description regarding type of benefit, listed person who received the benefit, and whether the benefit (or any part) was treated as taxable compensation
- List organizational practices in establishing compensation of top management official
- Certain types of extraordinary payments
 - Severance/change-of-control payment
 - Participate in, or receive payment from, supplemental nonqualified retirement plan
 - Participate in, or receive payment from, equity-based comp arrangement
- Any revenue-contingent compensation? Any compensation contingent on net earnings? Any non-fixed payments?
- More detail on many individuals listed in Form 990 Part VII.A. (including base/bonus/benefits breakdown)



990 Fundamentals

Key Schedules

Schedule L—Transactions with Interested Persons

- Identify excess benefit transactions (applies only to 501(c)(3), (c)(4), and (c)(29) organizations)
- Identify loans to and from interested persons
- Identify grants or assistance benefiting interested persons
- Identify business transactions involving interested persons

990 Fundamentals

Key Schedules

Schedule R—Related Organizations and Unrelated Organizations

- Identify:
 - Disregarded entities
 - Related tax-exempt organizations
 - Related organizations taxable as a partnership
 - Related organizations taxable as a corporation or trust
 - Certain unrelated organizations taxable as a partnership if the organization conducted more than 5% of its activities through the partnership
- Questions regarding transactions with related organizations, including information regarding transactions that are often commonplace among related entities (i.e., one entity raising funds for another, entities sharing facilities and staff, etc.)
- **“Related organization” definitions** in the main form glossary and instructions are key

IRS Key Topics of Interest

Very small percentage of organizations are audited each year:

- IRS Exempt Organizations completed examinations of 2,464 filings in fiscal year 2023, including the Form 990 series (990, 990-EZ, 990-PF, 990-N, 990-T) and their associated employment and excise tax returns
- Proposed 141 revocations

Exams are initiated a variety of ways:

- **Compliance Strategy Focus**—In the 2023 fiscal year, EO focused on noncompliance in three areas: private foundation loans to disqualified persons; 501(c)(7) non-member income; 990-N filing eligibility
- **Data-Driven Exams**—The most prominent issues found in data-driven examinations related to employment taxes, unrelated business income, and unreported compensation
- **Referrals, Claims, Other**—The most prominent issues found in examinations initiated by referrals, claims, and other casework involved Employee Retention Credit eligibility, employment taxes, filing requirements, and operational requirements related to operating for an exempt purpose

IRS Key Topics of Interest

Key areas of interest for IRS:

- Form not materially complete
- Employment taxes/worker classification
- Significant UBI
- Private benefit/private inurement
 - Compensation
 - Excess benefit transactions/transactions with interested persons
 - Diversion of assets
- Political activity

Managing 990 Preparation

What are the roles of:

- Finance
- Legal
- Program Staff
- Senior Management
- Board of Directors

Timeline considerations

- Year-end close of books and preparation of financial statements
- Independent audit of financial statements
- 990 drafting/review/approval



Managing 990 Preparation

990 reporting requirements do NOT always align with GAAP

- Carefully read instructions for the main form and relevant schedules

Whether and how to report certain activities or transactions is not always clear

- Carefully read instructions for the main form and relevant schedules
- Glossary is helpful
- For tough calls, consult outside counsel



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