

IRS Issues New Form 990 Requirements

During 2008, the Internal Revenue Service released new regulations that revamp IRS Form 990 and specify new reporting requirements for *tax exempt organizations*. Total Compensation Solutions (TCS) monitors these new regulations because they impact the reporting of executive compensation arrangements among our clients in the nonprofit industry sector.

The IRS issued final new Form 990 and associated instructions in January 2009 for use in filing Form 990 applicable to the 2008 tax year and beyond. Initial filing will phase in over a one-to-three year period depending on size of the organization. Smaller organizations will be allowed more time to phase in their compliance with the new form.

The revised Form 990 is designed to report more detailed information in a variety of areas, specifically compensation and governance information. Schedule J, which is used to: *report compensation information for certain officers, directors, individual trustees, and highest compensated employees, and information on certain compensation practices of the organization* requires more disclosure on compensation and compensation policy than tax-exempt organizations are accustomed. These disclosures are more closely aligned with those required by publicly traded organizations and even provide for supplemental information that allow for the explanation or descriptions of plans and policies.

The new Form 990 supports intermediate sanctions regulations and addresses several specific changes that will affect a tax exempt organization's reporting requirements. Specifically, Part I of Schedule J requires summary response on a variety of compensation and benefits issues including:

1. a summary of certain benefits policies offered to officers, directors, and trustees including: nature and type of travel expenses; reimbursement for tax obligations (gross up); discretionary spending accounts controlled by the official; housing allowances and reimbursement for use of personal residences; health or social club dues; and reimbursement for personal services (e.g., financial planning, etc.).
2. a response on whether the organization required substantiation of the reimbursed expenses
3. a response on the methods used to establish the compensation for the management officials and the appropriate authorities within the organization (compensation committee)
4. a list of officials affected by change-of-control provisions; supplemental non-qualified retirement plans; and any third party compensation arrangements
5. a response on whether any named officials received compensation based on revenues of the organization or a related organization
6. a response on whether any named officials received compensation based on net earnings of the organization or related organizations
7. a response on whether any named officials received a non-fixed payment in exchange for specified services (bonus/incentive payments)
8. a response on employment agreements or contracts between the organization and any named official of the organization

Part II of Schedule J specifies that nonprofit organizations must report the details of their respective compensation plans in a tabular form that provides for each named official (including all officers, directors, trustees, up to 20 key employees and highest compensated employees) a breakdown of the following compensation elements for those key employees earning in excess of \$150,000 of the aggregated elements:

- i. base salaries
- ii. bonus and incentive compensation
- iii. other current compensation including longevity and severance payments
- iv. deferred compensation
- v. the cost of non-taxable benefits plans (medical, disability, housing, education, etc.).
- vi. any compensation that was previously reported in a prior year Form 990

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The new Form impacts the way tax exempt organizations must report the details of their compensation arrangements. They are complex and require cost estimates that have previously been used for internal reporting only.

The summary response (Schedule J, Part I), is required for officers, directors, trustees and key employees earning over \$150,000. This revision of the Form 990 is designed to explain the decision making process and the safe guards that organizations use when compensation levels are established. In other words, nonprofit organizations will need to report their policies for setting base salaries; the performance measures used to establish bonus amounts under a bonus plan; and the policies governing the use and reimbursement of travel and entertainment expenses.

The tabular report (Schedule J, Part II), requires that tax-exempt organizations report all of the elements of taxable and non-taxable payments and further explain the reason for providing a base salary, a bonus, or travel and entertainment expense to officers, directors, trustees or other highly compensated employees. In contrast to the previous Form 990, nonprofits will now be required to break out all elements of the compensation package for officers, directors, trustees, and key employees that earn, in aggregate, over \$150,000.

There are new tables under Part VI and Part VII of the revised Core Form 990. These tables deal with W-2 and 1099 reporting for current and previous years. Needless to say, nonprofits will be spending more time compiling data that complies with the new regulations for tax year 2008.

TCS notes that the required response on pay from both related and unrelated organizations is designed to close a loop hole that some nonprofit organizations used when their officers, directors, trustees and key employees work for multiple organizations with related mission, monetary support, or ownership. The proposed change would require all taxable and non-taxable payments made to an officer, director, trustee or key employee be reported in each affected organization's Form 990.

These changes are significant and are designed to increase the transparency among tax exempt organizations. In particular, they provide contributors, grant makers and other financial supporters with additional information on administrative decisions made by the organization with regard to compensation and benefits.

TCS monitors these issues and works closely with the Board of Directors and its Executive or Compensation Committee to ensure compliance with the existing rules. We anticipate there will be a concerted effort to comply with the new regulations and we will work with our clients to ensure timely and accurate compliance with the new requirements. For more information on the new Form 990 requirements and how TCS can assist your organization, please call us.

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