

Governance in Form 990

The focus of the new Form 990 is on increased transparency (additional questions about most of the board's activities), compliance (legal requirements), and ethics (stressing avoidance of conflicts of interest and personal benefit.)

Form 990 is the main tool used by the IRS to verify that an organization meets its tax-exempt requirements. It also serves as a means to monitor changes in the sector in general and as a source of information for state regulators and the public at large. Potential donors, for example, may check out your organization to verify that it is a legitimate charity. Because the Form 990 is a public document, you should pay special attention to your organization's "profile" and describe your organization's activities and accomplishments accurately.

In 2009, nonprofits are filing the new Form 990 for the first time. They are discovering that a lot has changed and that these changes are substantial. The IRS's latest revision is, in fact, the first major overhaul of the document since 1979. This recent transformation affected only the base Form 990 and does not yet include 990-PF, 990-EZ, or 990-T. Probably the biggest change in the document relates to the IRS's specific interest in governance. There are detailed questions related to board structures and practices that focus on how nonprofit boards assume their role at the helm of their organizations.

Complaints about the original form stated that it did not give a complete picture of the organization and its achievements. All questions were not applicable to all filers and lacked logical sequence. In short, the form was difficult to fill out and gave a lopsided image of the nonprofit.

According to the IRS, it had three main principles in mind when revising the Form 990. First, the IRS wanted to enhance transparency to provide it and the public with a more realistic picture of an organization. Second, the IRS wanted to encourage compliance by shedding sunshine on the details of an organization's operations. And third, on a more practical note, the purpose of the revision was to minimize the burden on the filing organizations by streamlining the document.¹

In this paper, we dissect the revised Form 990, focusing on the board and addressing only direct governance issues. Part VI of the Form is the key section for this purpose, though we do cover relevant topics that pop up in other sections of the Form as well. We will explain why these governance issues are important to your board and organization — and to the IRS. And, we will include tips to help your board remain or become compliant — and even go beyond compliance to ensure that best practices become part of your organization's backbone.

¹ See the IRS discussion draft www.irs.gov/newsroom/article/0,,id=171329,00.html

Phased-in implementation

The change in the filing requirements can be quite labor intensive and onerous for some organizations. To facilitate the process, the IRS is taking a phased-in approach. The smallest organizations (see the chart) simply need to notify the IRS electronically each year of their existence; they do not need to be concerned about the Form 990.

Organizations with revenues less than \$200,000 and assets less than \$500,000 can file Form 990-EZ, a simplified, short version of the Form 990. All other organizations must diligently fill out their 990s. The intent of the IRS is to keep track of all tax-exempt organizations, regardless of their size, and eliminate the inactive ones from the records.

The following tables indicate when an organization may choose the easier solution of filing Form 990-EZ.

<i>2008 Tax Year (Filed in 2009 or 2010)</i>	<i>Form to File</i>
Gross receipts normally \leq \$25,000	990-N
Gross receipts $>$ \$25,000 and $<$ \$ 1 million, and Total assets $<$ \$2.5 million	990-EZ or 990
Gross receipts \geq \$1 million, or Total assets \geq \$2.5 million	990

<i>2009 Tax Year (Filed in 2010 or 2011)</i>	<i>Form to File</i>
Gross receipts normally \leq \$25,000	990-N
Gross receipts $>$ \$25,000 and $<$ \$500,000, and Total assets $<$ \$1.25 million	990-EZ or 990
Gross receipts \geq \$500,000, or Total assets \geq \$1.25 million	990

<i>2010 Tax Year and later (Filed in 2011 and later)</i>	<i>Form to File</i>
Gross receipts normally \leq \$50,000	990-N
Gross receipts $>$ \$50,000 and $<$ \$200,000, and Total assets $<$ \$500,000	990-EZ or 990
Gross receipts \geq \$200,000, or Total assets \geq \$500,000	990

2

² See www.irs.gov/charities/article/0,,id=184445,00.html

Structure of the revised form

After you have determined which version of the Form 990 your organization needs to file, it's good to study it carefully before diving in. The new Form consists of an 11-page core and 16 potential schedules or attachments that individualize it. Rest assured, however — no organization actually needs to file all of the attachments. Some are specifically geared to schools or hospitals or nonprofits that carry out particular financial transactions.

The Core

- **Part I: Summary** provides a snapshot of the organization's mission and primary activities, as well as a two-year history of the revenues and expenses reported for the current and previous year.
- **Part II: Signature Block** was moved to the bottom of the first page.
- **Part III: Statement of Program Service Accomplishments** includes reporting of new, discontinued, or altered program services.
- **Part IV: Checklist of Required Schedules** is basically a worksheet to help you determine which schedules you need to complete. There are 37 main questions relating to issues that need or can be clarified as an addendum to the core section.
- **Part V: Statements Regarding Other IRS Filings and Tax Compliance** provide information on additional, mostly finance-related filing requirements.
- **Part VI: Governance, Management, and Disclosure** concentrates on the governing body's composition and certain governance and disclosure policies and practices.
- **Part VII: Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors** contains all compensation issues of interest to the IRS (Schedule J-2 is the continuation sheet for this information).
- **Part VIII: Statement of Revenue** lists contributions, program income, and other revenue for the year.
- **Part IX: Statement of Functional Expenses** lists all expenses for the year. Public charities and 501(c)(4)s must complete all columns separating program, management, and fundraising expenses.
- **Part X: Balance Sheet** indicates the change in assets, liabilities, and net assets of fund balances between the beginning and the end of the year.
- **Part XI: Financial Statements and Reporting** requires reporting of certain information regarding financial statement compilations, reviews, or audits.

Schedules

The IRS estimates that 75 percent of all organizations will need to file Schedule A, 30 to 40 percent will need to file Schedule B, and 25 percent will need to file Schedules G and R. All organizations will need to file Schedule D. Schedules enable the IRS to gather detailed information without having to increase the size of the core document unnecessarily.

- **Schedule A:** Exclusively for public charities to indicate how they meet the public support test; it replaces the advanced ruling process (see sidebar below)
- **Schedule B:** Information on contributors and use of contributions
- **Schedule C:** Disclosure on lobbying and political activity

- **Schedule D:** Detailed financial information, including a table depicting the evolution of a potential endowment during five years
- **Schedule E:** Exclusively for private schools
- **Schedule F:** Exclusively to report foreign activities — foreign accounts, foreign exempt activities
- **Schedule G:** Information on major fundraising events, use of outside professional fundraisers, and gaming activities
- **Schedule H:** Exclusively for hospitals — a new section indicating the IRS’s concern about tax-exempt status for hospitals
- **Schedule I:** Listing of individual or aggregate grants of more than \$5,000
- **Schedule J:** Comprehensive compensation information on present and former board members and other key individuals
- **Schedule K:** Explanation of tax-exempt bonds liabilities
- **Schedule L:** Disclosure of financial transactions with interested individuals, including lending to or borrowing money from board members
- **Schedule M:** Listing of non-cash contributions if in excess of \$25,000 or gifts of art, historical treasures, or qualified conservation contributions
- **Schedule N:** Termination of significant assets: dissolving the organization or disposing more than 25 percent of net assets
- **Schedule O:** Supplemental narrative information that can’t be answered in the core document, including descriptions of various processes; this is where you can elaborate on all of your processes
- **Schedule R:** Clarification of all activities with related organizations

Advanced ruling test abolished

Previously, a newly formed public charity potentially had a 5-year “grace” period to prove that it actually qualified as a public charity and not as a private foundation. Today, a newly formed 501(c)(3) organization is automatically considered a publicly supported charity if it can reasonably make the case. It can achieve this by showing that it meets the public support test. In practice, this means that either a substantial part of its financial support consists of contributions generated from public fundraising campaigns or government grants or up to one third of its revenue comes from exempt-related services, investments, or membership fees.

And governance in all of this...

Every tax-exempt nonprofit must have a board. It is the body responsible for the organization. During the past several years, the IRS has given growing attention to how the board assumes its role and remains accountable for the accomplishments and ethical behavior within the organization. While perusing the Form 990, you will find numerous issues related to the board that you now need to report.

Board composition

The IRS asks who serves on your board, although the actual names are probably more interesting to those who review your organizational information for personal or professional purposes. The IRS inquires about the individuals’ relationships and ties within your organization: Are there apparent conflicts of interest? And how is your board equipped to exercise independent judgment when making decisions?

List of board members

List the names and titles of all board members and officers in the compensation section — whether any compensation is provided or not. (Part VII)

Voting members

State how many voting board members you have. Exclude ex officio non-voting members. The IRS wants to know only the size of your decision-making body. If your chief executive is a voting member, you need to add him or her to the number. (Part VI, Section A) If your board members have unequal voting rights, explain the material differences in Schedule O.

What is a good size for your board?

This question is one of the trickiest and toughest to answer as there is no universal answer. Every board is different and needs to determine for itself what its size should be. State laws indicate the minimum size, which tends to be from one to three members — meager numbers if you want to include diversity on your board. So, think of these numbers only as the legal minimum, not the recommendation. The optimal size of your board may be affected by the following things.

- Mission of your organization
- Amount of work to be accomplished
- The lifecycle phase of your organization; each phase may have different needs
- Outside mandates stated in government contracts or agreements with a parent organization
- Diversity of the community you serve and a desire to expand perspectives on the board
- Efficiency of your board members
- Group dynamics

Contact information

It is not necessary to provide an address for board members. The first draft of the new form requested the organizational address or the city where the board member is located — the final version does not contain this request. However, if it is not possible for the IRS to reach any of your board members (or other key individuals) via the organization's mailing address, you need to provide an address in Schedule O. This address, by the way, will become public information.

Independence of board members

The IRS is very keen on learning how your board handles the independence of its members. Right after you list the number of voting members, you must indicate how many of them are independent. For a board member to be considered independent in the eyes of the IRS, the following three conditions must be met:

- No compensation as an officer or employee of the organization or a related organization. Most often this refers to a board member serving a dual function as a board member and a staff member.
- No (or less than \$10,000) compensation as a contractor to the organization or a related organization. Reimbursement of expenses is not included in this calculation.

- No other financial transactions directly to the organization or a related organization or to a family member from the organization or a related organization. This includes loans, grants, and other similar payments.³

The IRS addresses additional conflict-of-interest issues separately and probes deeply into the processes of handling these situations.

Independence and independent-mindedness

While it is necessary to define independence in practical terms, the ultimate objective is to have board members who are able to think independently. An independent-minded board member is able to put the interests of the organization above all else. By law, board members must adhere to the duty of loyalty. Personal agendas, undue influence by peers or colleagues, or inherent conflicts of interest do not belong in the boardroom. Independent board members make educated decisions that are well founded and reflect their own conscience.

Compensation

Compensation is of primary concern to the IRS. It wants to know who gets paid, how much they get paid, and via which process. Compensation information has always been requested in the Form 990, but this time the IRS has expanded its scope of interest considerably.

Above all, the IRS wants to ensure that no tax-exempt organization is involved in private inurement, undue or excessive remuneration for services not provided, or that decisions related to financial transactions are made by “insiders” who have a conflict of interest in the outcome. The IRS pays particular attention to

- whether board members are compensated and, if so, its reasonableness
- whether your organization engages in financial transactions with former board members
- how the board determines appropriate compensation for the chief executive
- whether the compensation for senior staff is appropriate
- whether non-key staff members are among the top 20 highest compensated individuals
- whether anyone above is compensated by related organizations
- how many hours each of the above works weekly
- which position each of the above holds within the organization
- whether the organization engaged in excess benefit transactions with a disqualified person (person with a personal stake in the decision)
- whether any money was loaned to or borrowed from any of the above individuals or whether a grant or other financial assistance was given to anyone above
- whether any of the above individuals have direct or indirect business relationships with the organization
- other compensation, including paid and deferred bonuses, tax-deferred payments to retirement plans, health care benefits, travel or moving payments, entertainment accounts, social club dues, and cashed-in vacation days
- processes for determining compensation for the chief executive, officers, or key employees

³ See p. 16 in www.irs.gov/pub/irs-pdf/i990.pdf

Note that even with no compensation, you need to list the names of all of your board members, officers, and employees who meet the “key employee” definition. If the compensation meets specific levels, you need to report the amount on the core form. Additional levels require you to report the details in Schedule J. For example, you must report all key employees earning \$150,000 or more.

The IRS gives heightened attention to the following, which must be reported:

- Compensation for current board members and officers, regardless of the amount.
- Compensation — if more than \$10,000 — for former board members and officers. After five years, one is no longer a “former board member.”
- Compensation — if more than \$150,000 — for your top 20 *key* staff members. Your chief executive and chief financial officer are considered as officers of the organization and not key employees. (The IRS finally raised this compensation level from \$50,000.)
- Compensation — if more than \$100,000 — for the five most highly remunerated employees who are not listed among your key employees.
- Compensation — if more than \$100,000 — for former officers and key employees.
- Compensation — if more than \$100,000 — for independent contractors.

Who is a key employee?

The IRS has fine-tuned its definition for a key employee. To fit the definition, the individual must

- not be a board member or officer
- earn more than \$150,000 as total compensation
- enjoy considerable responsibility within the organization
 - similar responsibilities to an officer or board member
 - responsibility for at least 10 percent of the organization’s activities or expenses
 - be among the top 20 highest paid employees with considerable responsibilities

Compensation process

In Section B (Policies) of Part VI, the IRS focuses on the process of determining compensation for the chief executive and other key individuals. First, all managers of tax-exempt organizations need to be familiar with intermediate sanctions, which are penalties levied by the IRS for cases of excessive financial gain. Second, to avoid and protect key individuals against these potentially substantial excess taxes, all organizations should adhere to the intermediate sanctions’ safe harbor clauses. Never before has the IRS asked you to report whether and how you follow these rules or recommendations.

The IRS asks specifically whether the following three safe harbor clauses are part of your compensation process:

1. Does your organization rely on comparable data? Determining reasonable compensation for a position is a multi-faceted task. Appropriate pay may be influenced by the specifics in the job description, experience of the manager, scope of the activities in the organization, number of employees, budget size, location of the office, and even the mission of the nonprofit. There are national and regional surveys that provide relevant data. Make sure you use the latest data or add appropriate increases to older base figures. GuideStar (www.guidestar.org) posts the Form 990 for most charities, making that data available for study. It is good to remember that relevant for-profit companies also can be used as references.
2. Do independent individuals approve the compensation for top management? If board members have a personal interest in the compensation package, they should not vote on its approval. Some boards hire a compensation consultant who does the appropriate research and recommends an acceptable and reasonable package. As long as the board follows due diligence when choosing a consultant, engages a reputable consultant, and ensures that the data provided references a relevant time period and relies on a number of comparables, the board should be able to trust the professional recommendation and help protect itself from liability.
3. Does the board keep accurate and contemporaneous records of how the compensation decision was made? These records include the comparability data that was used, the names of the individuals who approved the decision, and the latest W-2, 1099, or 1040 forms, which are acceptable contemporaneous references. All these records could prove helpful if ever the IRS contested the reasonableness of the compensation. The board or a committee member would need this information to avoid personal excise taxes related to intermediate sanctions.

How can a person approving compensation avoid conflict of interest?

The IRS defines the parameters that exonerate a board or a staff member. A compensation decision can be made by an individual

- who is not benefiting personally from a financial transaction or is a member of the family of such a person
- who does not have an employment relationship with a person receiving compensation or other payments
- whose payments are approved by someone also benefiting financially from the situation
- who has no material interest in the payment arrangement
- who does not approve a transaction that appears to be a quid pro quo

The IRS also wants to know whether the above process was followed when your organization determined compensation for the rest of the officers and key individuals.. Describe your process in Schedule O.

Benefits of compensation philosophy

The benefits of adopting a compensation philosophy are numerous.

Efficiency — With a predetermined set of guidelines, the organization is able to rely on a systematic approach to all compensation questions. A base for decisions exists, and neither the board nor a staff member needs to reinvent the wheel each time a human relations issue arises.

Financial planning — A philosophy spells out the long-term financial implications related to compensation. Promotions and bonuses affect budget calculations. A philosophy becomes handy when circumstances require a strategic decision to be made that impacts pay capacity.

Legal protection — Documented policies serve as a liability protection for the organization. A philosophy ensures that all necessary legal issues have been incorporated, including the IRS safe harbor provisions against intermediate sanctions.

Human resources — A philosophy helps draft a non-discriminatory, merit-based compensation program for the organization. A well-balanced philosophy impacts the organization's capacity to

- attract a qualified workforce and retain motivated employees
- stress a link between performance and compensation
- accomplish internal and external equity
- maintain satisfaction and office morale
- create an organizational reputation as a great work place

Loans or other financial assistance to board members

Most board members in American nonprofits serve as volunteers without compensation. This ensures that the board is an independent body that makes decisions for the good of the organization without weighing in personal benefits. Financial benefits, however, are not limited to salaries or fees for attending meetings, which under certain circumstances may prove to be appropriate. Financial benefits can include loans or other types of financial assistance to board members, which are often much more difficult to justify than salaries or fees. If the organization provided loans, grants, or other financial assistance to board members, officers, or key employees, the IRS wants you to report it in Schedule L.

Delegation of authority

If your board has delegated part of its authority to an executive or another similar committee, you need to describe the composition of this group (including non-board members who do not share the same fiduciary duty with the full-fledged board members) and the scope of its authority in Schedule O. In other words, if your executive committee can meet and act on behalf of the board, you need to clarify the details in Schedule O. It is not necessary to explain specific subject matter powers and tasks your board has delegated to other committees or task forces, such as the responsibility to review your membership benefits or to lead your capital campaign. Most committees have a charter and are expected to manage their tasks independently. Usually their decisions are not organizational decisions but recommendations that the full board is not obligated to accept or follow.

Board practices and policies

When drafting the new Form, the IRS demonstrated its increased interest in governance by including a special section on board-related issues, rather than scattering a few questions here and there throughout the Form. This approach underscores the IRS's interest in how nonprofits carry out their missions.

Many question why the IRS is so curious about an organization's policies and processes. After all, these policies and processes are not *required under the Internal Revenue Code*, and the IRS does not have the authority to enforce them. It may be that the IRS aspires to take an educational role by asking nonprofits to simply indicate “yes” or “no” if a policy exists. It sees a direct link between the existence of policies and compliance and is sending a message: The absence of policies may lead to activities or processes that are not appropriate for tax-exempt organizations.⁴

Even if there is no universal requirement for all tax-exempt organizations to run their affairs exactly in the same manner, you should pay close attention to the questions in the Form 990 and, at the very least, discuss why you don't have a particular policy. It may be that answering “no” to some of the questions will increase the possibility of being audited by the IRS — only time will tell.

Mission and activities of the organization

Both in the Summary and Part III of the Form, there is a small space available for explaining the mission and major programs of your organization. In Part III, you have three lines to clarify your mission or include your mission statement, if it is succinct. Because the IRS wants to keep the entire Form searchable, an attachment here is not advantageous. It also is probably not wise to write “none” — an option the IRS provides — although we need to monitor the IRS's reactions to that option. So, if you do not have a clear and concise mission statement, it is time to draft one. If you describe your mission in this Form, there is an underlying assumption that your board has approved or adopted it.

The IRS also poses questions about your major programs. If you made any significant changes — adding, ending, or altering how you deliver your programs — explain them in Schedule O. But having programs is not sufficient; they must accomplish something. For the IRS, accomplishment refers to how the activity helps your organization fulfill its exempt purpose, and it seems to be satisfied with simple reports on how you provided beds for the homeless, welcomed uninsured individuals to your health-care clinic, or helped immigrants better integrate into the community. Nonprofits should pay very close attention to the impact their programs have on their communities and to the efficiency of their efforts, however. Hopefully, your organization assesses its performance on a regular basis and has in-depth information about your programs' impact.

Conflicts of interest

Conflicts of interest are probably the most complicated and most often misunderstood situations with which a board and staff have to deal. Few are perfectly clear. Conflicts of interest are not only financial in nature and can implicate an insider directly or indirectly. Some of them are inherent and can be addressed with a simple policy, but most of them are situation-specific and therefore need individual attention as they surface.

The IRS wants to know (Part VI, Section B) whether you have a written conflict-of-interest policy, whether board members and key staff are required to disclose potential interests that could lead to a conflict, and whether these situations are monitored and enforced. Schedule O is the place to describe your processes.

⁴ See the background paper posted on the IRS site www.irs.gov/pub/irs-tege/moving_from_old_to_new.pdf

By asking whether you share your conflict-of-interest policy with the public, the IRS is likely advocating for total transparency. Whether this is good or necessary is worthy of continued discussion. It's worth noting, however, that the tax-exempt application, Form 1023 or 1024, has asked for several years now whether an organization has a conflict-of-interest policy. If your organization had an existing policy at the time, you probably attached it to the application, making it part of the public document. You, therefore, should continue to make the policy available.

What to include in your conflict-of-interest policy

A comprehensive — and helpful — conflict-of-interest policy includes the following:

- Definition of a conflict of interest. You might even cite some examples that might be applicable to your organization. Remember that not all conflicts are financial in nature.
- List of positions and relationship that might be implicated by potential conflicts of interest.
- Processes for handling these situations: disclosure, non-participation in discussion, leaving the room, recusing oneself altogether.
- Your method of enforcing the policy.
- Sanctions for not following the policy.

You may notice how **potential** conflict-of-interest situations appear throughout the Form. They may not be labeled as such, but it is helpful for you to be able to identify them.

Some of these examples include:

- a board member or key employee may be affiliated with a business partner
- a family member may have a relationship with the organization
- a board member or a key employee may have a business relationship with another board member
- a board member or key employee makes decisions that directly or indirectly affect him or her in positive or preferential manner

Election of board members

A majority of public charities have self-perpetuating boards. In other words, board members are responsible for rejuvenating the board and bringing in new members. In trade and professional associations, it is common to see member-elected boards. In these formal membership organizations, members have an important function in determining the organization's direction and primary activities. In addition to electing the board, members often have the right to approve major organizational decisions, including amendments in the bylaws. In Part VI, Section A, the IRS wants to know whether these decisions are applicable to your organization.

Governing documents

Numerous documents clarify how your board functions, is structured, and what decisions it makes. Some of these documents are for internal purposes, others are for your constituents or the general public. The IRS is interested in knowing whether you keep accurate information and how you share it in various reports.

Before 2009, if your organization amended its bylaws, you were requested to attach a revised copy to your next Form 990. Today, the IRS asks (Part VI, Section A) whether you made any significant changes in your governance documents — bylaws, articles, or any other similar document. If you answer “yes”, you must explain the changes in

Schedule O. Significant changes in these documents, for example, address alterations in your board's size, quorum requirements, qualifications of officers, or your dissolution clause. You no longer need to send the amended bylaws to the IRS.

The IRS sends a message that accurate and contemporaneous minutes of your meetings are necessary. In Part VI, Section A, you need to indicate whether your board documents decisions taken in meetings. The same applies to any committees — usually your executive committee — that have the authority to act on behalf of the board.

What should minutes include?

Board meeting minutes record all the actions the board takes in its meeting. It is not a verbatim document of the discussions in the meeting. While content can vary, based on your individual organization, the basic elements of good minutes include:

- name of the organization
- date and time of meeting
- board members in attendance, excused, and absent
- existence of a quorum
- motions made and by whom
- brief account of any debate
- voting results
- names of abstainers and dissenters
- reports and documents introduced
- future action steps
- time meeting ends
- signature of secretary and chair

Your Form 990, now more than ever before, acts as the window to your organization and how your board carries out its duties. As you look at the extensive content in it, you must realize how important it is to provide accurate and complete information. You may want to rely on a CPA or legal counsel to complete or review the form (naturally with careful internal input on the details and facts). Whether a more close examination is done by a board committee or the chair, you should expect every board member to be familiar with your Form 990. In Part VI, Section A, the IRS asks whether the board receives a copy and what its review process is.

Presently, your organization must make available for public inspection the last three years' Form 990 and your tax application form 1023 or 1024. Now, for the first time, you must also report in Schedule O how you make the Form 990 — as well as your financial statements, governing documents, and your conflict-of-interest policy — available to the public. In addition, you need to indicate in the core form (Part VI, Section C) how the public can contact the person who is responsible for maintaining these records. Naturally, no personal address or phone number needs to be disclosed.

Whistleblower policy

Since the Sarbanes-Oxley Act was passed, many nonprofits have hurried to draft a whistleblower policy. Neither the law nor the IRS actually requires nonprofits to have a policy per se. The Act, which is an amendment to the criminal law and therefore applies to for-profits and nonprofits alike, simply states that alleged whistleblowers may not be retaliated against in any fashion. However, to ensure that this does not happen, it makes sense to draft a policy reminding everyone of the regulations and providing a process for reporting alleged wrong doings.

Key elements in a whistleblower policy

Reporting illegal, unethical, or fraudulent activity should be possible without dire consequences for the informer. A whistleblower policy explains the organization's process for filing and handling alleged improprieties. Key elements of this policy explain the following points:

- The whistleblower will be protected from any type of retaliation.
- Retaliation extends to firing, demotion, harassment, or any other kind of unfair treatment.
- Reporting of incidents is a confidential process.

The policy might include sample cases to clarify unacceptable acts or situations.

Document retention and destruction policy

The Sarbanes-Oxley Act also requires nonprofits to pay attention to the document destruction clauses of the criminal law. During an official investigation — and even in anticipation of one — it is illegal to destroy any litigation-related documents. And once again, even though a written policy is not required, it is a good idea to draft one. It can provide guidance on how to handle a tricky investigation and clarify how long specific documents need to be retained, sending a message that a regular purging of files and documents is considered a normal and necessary business practice. The policy should cover the treatment of electronic communication and documents.

Joint venture policy

A tax-exempt organization is not forbidden from embarking on joint ventures and collaborations with individuals and for-profits as long as it does not engage in activities that jeopardize its exempt status or that become a substantial purpose of its existence. These ventures might involve investing in for-profit businesses or actually partnering in a business endeavor with a for-profit entity. The IRS wants to make sure, however, that the nonprofit remains in control and continues to determine its own internal affairs at all times. Also, the joint venture may not be involved in activities that are normally prohibited for a tax-exempt entity, such as political activity or excessive lobbying.

If your organization is engaged in business ventures, you need to indicate in Part VI, Section B whether you have a written policy that covers these activities or a procedure that evaluates them regularly to ensure your tax-exempt status is never jeopardized.

Things to remember

Form 990 has always concentrated heavily on financial transactions and records within a tax-exempt organization. They are still the primary focal points for the IRS. Because of the new interest on board practices, BoardSource wanted to highlight the various governance-related matters that your board should pay special attention to before your Form 990 is filed. Make sure you feel comfortable about the following issues:

- **Accuracy:** Form 990 serves as an introduction to your organization. In addition to be viewed by the IRS, it is viewed by your constituents, donors, and the media. You do not want to share inaccurate information about your organization or its board.
- **Compliance:** The IRS recognizes your organization's tax-exempt status. The Form 990 allows the IRS to verify that you still meet the expectations and deserve

- your special status. If you discover that you are not meeting legal requirements, get to work and ensure that the necessary changes are made.
- **The No-answers:** Because you must report on numerous internal practices — even if not all are not legally required — some of the no-answers may raise red (or at least yellow) flags in the eyes of the IRS. When you answer “no” to a question, make sure that you have a justified reason for it and that you explain it sufficiently in Schedule O. Although only time will tell, no-answers may lead to a heightened audit profile.
 - **Relationships:** The IRS is particularly interested in various interdependencies and relationships among your insiders (e.g. board members, key staff) and individuals or entities with which your organization does business. Make sure due diligence is part of your processes to justify these relations or any transactions between them.
 - **Compensation:** The IRS is determined to ensure that whoever is compensated or remunerated for services provided truly earns it. Be familiar with the IRS’s safe harbor clauses and follow them to protect yourself and your organization. Note that compensation may include deferred compensation or payments from related organizations and that there is a difference between compensation for governance work, reimbursement of expenses, and consulting fees.

If you feel any questions are too broad, too detailed, misleading, or may create a wrong image of your activities or practices, jot them down and have your chief executive share your concerns with the IRS (see the address in Appendix I). There is always room for improvement.

Appendix I
To Learn More: Helpful IRS Links

Form 990 for the fiscal year 2008 www.irs.gov/pub/irs-pdf/f990.pdf

Detailed instructions for the Form 990 www.irs.gov/pub/irs-pdf/i990.pdf

Form 990 Filing Tips – related to governance
www.irs.gov/charities/article/0,,id=208553,00.html

IRS definition for an independent board member
http://goliath.ecnext.com/coms2/gi_0199-7875663/IRS-Releases-Draft-Instructions-To.html

Where to send your comments on the new Form 990 Form990Revision@irs.gov

Online tutorial: Stay exempt www.stayexempt.org/

Appendix II

BoardSource resources

Dollars and Sense: The Nonprofit Board's Guide to Determining Chief Executive Compensation by Brian H. Vogel and Charles W. Quatt

www.boardsource.org/Bookstore.asp?category_id=0&Item=166

Setting appropriate compensation for the chief executive is one of the board's responsibilities. This book outlines the various criteria to do it right.

Managing Conflicts of Interest: A Primer for Nonprofit Boards by Daniel L. Kurtz and Sarah E. Paul

www.boardsource.org/Bookstore.asp?Item=182

This new edition promotes culture of disclosure and how to avoid and handle conflict-of-interest situations effectively.

The Nonprofit Board's Guide to Bylaws by D. Benson Tesdahl

www.boardsource.org/Bookstore.asp?category_id=0&Item=127

A template of sample bylaws for organizations with self-perpetuating and member-elected boards is included in the small guide.

Nonprofit Governance Index 2007 by BoardSource

www.boardsource.org/dl.asp?document_id=553

This research report shares data about board practices in the United States.

The Nonprofit Legal Landscape by Ober/Kaler, attorneys at law

www.boardsource.org/Bookstore.asp?category_id=0&Item=162

This expansive book explains the laws and legal concepts that every board member and chief executive should be familiar with while leading a nonprofit.

The Nonprofit Policy Sampler, Second Edition by Barbara Lawrence and Outi Flynn

www.boardsource.org/Bookstore.asp?category_id=0&Item=45

This book provides the key elements and tips for drafting your own policies and job descriptions. Downloadable e-policies also available at

www.boardsource.org/Bookstore.asp?Type=epolicy

The Sarbanes-Oxley Act and Implications for Nonprofits by BoardSource and Independent Sector

www.boardsource.org/dl.asp?document_id=558

This white paper discusses each of the major provisions of the law and their relevance to nonprofit organizations. In addition, it offers recommendations for how nonprofit leaders should implement various provisions of the law.

The Source: Twelve Principles of Governance That Empower Exceptional Boards by

BoardSource www.boardsource.org/Knowledge.asp?ID=4.922

The "Little Black Book" introduces the specific practices that allow a responsible board to turn into an exceptional board.

Ten Basic Responsibilities of Nonprofit Boards by Richard T. Ingram

www.boardsource.org/Bookstore.asp?Item=112

The core responsibilities described in this best-seller are applicable for most nonprofit boards. These responsibilities are also explained in short videos www.boardsource.org/?ID=35.430

Understanding Nonprofit Financial Statements by Steven Berger

www.boardsource.org/Bookstore.asp?Item=1082

Find clear explanations of essential and even complicated financial reporting and accounting terms in this guide.