

The New Form 990

TELNET 2499 June 2, 2009 1-2 pm EDT

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Form 990 Background

- **Form 990 is used by the IRS as the primary tax compliance tool for tax-exempt organizations.**
- **Most States use Form 990 for State exemptions.**
- **Publicly available document.**

Form 990 Background (cont.)

- Approximately 1.3 million public charities and other tax exempt organizations file with the IRS.
- IRS states that the current Form 990 has not kept pace with changes in the sector or the law.

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IRS Form 990



- IRS released a revised Form 990 “Return of Organizations Exempt from Income Tax”
 - Effective 2009 (for the 2008 filing year)
 - IRS goal is to enhance transparency, promote compliance and minimize filing burdens
 - Last redesign occurred in 1979



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What did IRS do?

- December 20, 2007, released a “final” version of the Form 990 redesign
- To be used for 2008 tax year (2009 filing season), with some transition relief
- March 2009, Instructions released and may be found at <http://www.irs.gov/instructions/i990-ez/index.html>.
- Also provided overview, background, highlights documents to explain what we did and why – if you have a question about what we did, good chance we covered it in these documents
- To address implementation concerns, we raised filing amounts for the 990-EZ for 2008 and 2009

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IRS Form 990 (cont.)

- **New Form 990 consists of:**
 1. Summary page
 2. 10-page core form
 3. 16 schedules
- **Old Form 990 consists of 9-page core form and 2 schedules.**

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Summary Page

Form 990 summary page provides a snapshot of key financial, compensation, governance and operational information.

Also includes:

- Revenues, expenses, assets, liabilities, and net assets.
- Fundraising and contributions.



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Core Form

Form 990 core form requires information such as:

- Compensation of officers, directors, trustees and key employees.
- Revenues, expenses and balance sheet information.
- Board or governing body composition.



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Form 990 Schedules

Revised Form 990 adds 4 new schedules:

- Schedule F: Foreign Activities
- Schedule K: Tax Exempt Bonds
- Schedule M: Non-cash contributions
- Schedule H: **HOSPITALS**



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Implementation Timetable

- 2008 tax year, 2009 filing season, with following exceptions
 - Targeted relief: hospitals and Schedule H only required to complete part of the schedule for 2008, fully implemented for 2009 tax year
 - Same for Schedule K and bonds
 - Broad relief for smaller organizations: bumped up filing amounts for 2008 and 2009 to bring in groups of filers over a three year period
 - Permanent increase in EZ filing amount in 2010

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Highlights of the New Form

- Core form for all, with 16 schedules to be completed based on activities
- We believe significantly improves information reporting for our tax compliance needs, and for the transparency needs of the public
- New or expanded reporting of governance, compensation, related organizations, joint ventures, endowments, non-cash contributions, hospitals, tax-exempt bonds
- Expanded opportunities to provide descriptions and explanations, tell their story

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Highlights of the New Form (cont.)

- The new 990, 990-EZ, 990-N (e-Postcard) takes into account both the size and type of organization
 - Increased EZ filing thresholds takes into account different sizes of the EO filers
 - 990's Schedules approach takes into account different activities of the EO filers
 - E-Postcard for the smallest, EZ for the small, and 990 for the rest

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Some Key Points

- Retained ability to file group returns
- Otherwise retained reporting on separate entity basis, rather than on a consolidated basis
- Financial reporting aspect of the form is largely unchanged, although we have eliminated many attachments
- Much of the new or additional information on the form relates to non-financial information, where we are attempting to obtain better information in targeted areas, both for compliance and transparency purposes

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IRS Form 990: Schedule H

1. Schedule H applies to organizations that operate at least one facility that provides hospital or medical care.
2. In the hospital area, concerns have been raised about whether there are differences between for-profit and tax-exempt hospitals.
3. The proposed schedule is designed to combat the lack of transparency surrounding the activities of tax-exempt organizations that provide hospital or medical care.
4. Schedule H focuses on excessive compensation, insider loans, easement valuations, and questionable donations.

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IRS Form 990: Schedule H (cont.)

Specific Schedule H requirements:

- Part I: Information on the aggregate community benefit for all facilities
- Part II: Information regarding billings and collections
- Part III: Information on management companies and joint ventures
- Part IV: General information on exempt activities and community

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IRS Form 990: Schedule H (cont.)

- **Community Benefit Reporting**
 1. **Bad Debt?**
 2. **Medicare Shortfall?**
 3. **Charity Care?**
 4. **Other Community Benefits?**



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IRS Form 990: Schedule H (cont.)

April 22, 2009 – IRS released 2008 Form 990 and 990-EZ

New Schedule H:

- Tax exempt hospitals must demonstrate compliance with the community benefit standard
- After receiving hundreds of comments from the hospital community and Congress, IRS elected to:
 - i. Include Medicare underpayment and patient bad debt on the community benefit reporting form;
 - ii. Restored community building programs as a reportable benefit;
 - iii. Removed the “burdensome” billing information chart
 - iv. Delayed for one year the Schedule H filing requirement for any portions unrelated to identifying information.

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IRS Form 990: Schedule H (cont.)

- **Charity Care and Bad Debt**
- **Financial Reporting**
 - **Should be based on cost, not charges**
 - **Bad debt is not included as charity care**
 - **Government shortfalls not considered charity care**
- **Charity care depends on Hospital’s charity care policy**

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IRS Form 990: Schedule H (cont.)

- Schedule H requires percentage efficiency indicators.
- Criticized by Taxation and Health Law sections of the ABA as not providing meaningful information.
- For example, integrated health systems (i.e., universities) often have parent organizations with staff members who perform functions for several hospitals.
- An Integrated Health System therefore reports high percentages of efficiency, even though the system as a whole has a low percentage.

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IRS Form 990: Schedule H (cont.)

- **Quantification of charity care**
 - Measured at cost – cost to charge ratio may be accepted
 - Charity care does not include bad debt or Medicare shortfalls but does include unreimbursed Medicaid and other means tested government programs
 - Direct offsetting revenue
- **Quantification of community benefit**
 - Includes research, in-kind contributions, health professions education
 - Subsidized health services
 - Community health improvement services
 - Community building activities reported separately

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IRS Form 990: Schedule H (cont.)

- **Bad Debt Expense**
 - Report at cost, including cost of bad debt associated with patients eligible for charity care
 - Include related financial statement footnote and explain costing methodology
 - Use of **HFMA statement 15**
- **Medicare**
 - Total revenue including DSH and IME but not GME
 - Medicare allowable costs for this revenue
 - Cost shortfall and how calculated and whether community benefit
- **Collection: whether policy and whether provisions addressing collection practices for patients known to be eligible for charity care or financial assistance**

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Part III -- Measuring Community Benefit -- An Introduction to New Schedule H (Mostly Optional for 2008)

- **Provides information regarding**
 - Community benefit
 - Elements of charity care policy
 - Role of Board in identifying community needs
 - Community needs assessment
 - Facilities
- **Community benefit**
 - What counts and what doesn't
 - Charity care
 - Medicaid shortfall
 - Medicare shortfall
 - Bad debt
 - Other categories
 - Cost-based quantification

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Part III -- Measuring Community Benefit -- An Introduction to New Schedule H (Mostly Optional for 2008)

- **How much is enough?**
 - “[T]he additional public benefit conferred must be sufficient to give rise to a strong inference that the public benefit is the primary purpose for which the organization operates.” **10th Circuit in *IHC***

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Compensation

Compensation information is potentially disclosed in the Core Form 990 Part VII and potentially on Schedule J.

Compensation disclosures:

- Are done on a Calendar year basis.
- Organizations with a fiscal year other than a calendar year should use the calendar year that ends within their fiscal year.
- Treasury issued Temporary Regulations on September 8, 2009 to implement this change.

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Form 990 Part VII

Form 990 Part VII Includes:

- Current Officers, Directors and Trustees (whether or not compensated).
- Current Key Employees.
- Top 5 Highest Compensated Employees.
- Former Officers, Key Employees and Highest Compensated Employees (over \$100,000 of reportable compensation with special rule for former highest compensated employees).
- Former Directors and Trustees with over \$10,000 of reportable compensation in the capacity of as a former Director or Trustee.

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Some Definitions

Key employee is one who:

- Has reportable compensation from the reporting entity and all related entities in excess of \$150,000 (*the \$150,000 Test*);
- Has responsibilities powers or influence over the organization as a whole that is similar that of an officer, director or trustee or manages a discrete segment or activity of the organization that represents $\geq 10\%$ of the activities, assets, income or expenses of the organization or (3) has or shares authority to control or determine $\geq 10\%$ of the organization's capital expenditures, operating budget, or compensation for employees (*the Responsibility Test*); and
- Is one of the 20 employees with the highest reportable compensation from the reporting entity and all related entities (*the Top 20 Test*).

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Form 990, Part VII (cont.)

For each listed individual/entity report:

- **Reportable compensation paid by the reporting entity**
- **Reportable compensation paid by an entity related to the reporting entity, but need not include payments from a single related organization if less than \$10,000 except to the extent paid to a former director or trustee for services as a director or trustee**

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Form 990, Part VII (cont.)

The organization need not report payments made by a related for-profit organization if it meets the Volunteer Exception.

The organization need not report payments that meet the Bank or Financial Institution Trustee Exception.

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Issues to Consider

- Compensation as disclosed on Part VII may not tie to Schedule J numbers:
 - Amounts paid by related parties are only disclosed if > \$10,000
 - Benefits are estimated
 - Non-taxable fringe benefits are not reported
- Employees paid pursuant to a common paymaster are reflected based upon how salary allocated. What if payroll is centralized, but a common paymaster does not exist?
- Similarly, if there is a centralized AP, how are independent contractors reported?
- Know who your “Key Employees” are.
- How do you learn of compensation paid by an unrelated organization?

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Schedule J Disclosure

Schedule J disclosure is required when:

The individual is listed on Core Form 990, Part VII and:

- Is a former officer, director, trustee, key-employee or highest-compensated employee; or
- Has more than \$150,00 of reportable compensation (medicare wages) and other compensation.

Also include any individual listed in Part VII for which the filing organization had knowledge that he/she received or accrued compensation from an unrelated organization for services rendered to the filing organization.

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Schedule J: Compensation

Disclosure of expense reimbursement or compensation practices related to:

- First class or charter travel
- Travel of companions
- Tax indemnification and gross-ups
- Discretionary spending amounts (an account for which there is no substantiation requirements under an accountable plan)
- Housing allowance
- Payments for business use of personal residence
- Health and social club dues or fees
- Personal services (maid, chauffeur, chef, financial planning, tax return preparation services, etc)

If any of the above benefits are provided and explanation providing relevant details should be attached.

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Issues to Consider

- Identifying the existence of certain perquisites is not easy
- Corporate credit cards/procurement cards – are they paid before the substantiation is provided to the employer
- Accountable plans may need to be updated
- May necessitate that tax return preparer have access to employment agreements
- Determining whether compensation is contingent on the revenue of the organization is an art, not science, particularly as it relates to physicians
 - Typically multiple factor to determining compensation (e.g. collections less expenses, RVU bonus pool and other)
 - Confusion whether payments based on RVU's are "revenue-based"
- Valuation of medical benefits for self-funded health insurance.

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Issues to Consider

- Disclosure requirement on Schedule J regarding severance and other arrangements may create other problems for the organization (i.e. violating a confidentiality clause in the employment agreement)

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Schedule J Compensation

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How to Prepare

- Form a multidisciplinary group to address how to meet the reporting requirements;
- Review programs currently counted as community benefit to ensure they meet IRS standards;
- Collect community benefit data in real time;
- Sharpen charity care policies; and
- Consider the use of IT to facilitate charity care decisions and community benefit data collection.

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THANK YOU!!!

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