



Executive Compensation and the New Form 990

By Nancy Carver

The IRS has always looked at executive compensation to determine how well a non-profit is governing its organization. Recently, IRS revised its Form 990 to better capture executive compensation. Specifically, IRS is trying to ensure transparency for all stakeholders with respect to the type and amount of compensation paid and accountability with respect to how that compensation compares with compensation paid to similar positions by similar organizations. Since the Form 990 is a public document stakeholders can easily access it.

Compensation reporting has changed in that IRS now requests compensation data on a broader range of payments and for broader range of executives, including current and former directors and officers, key officials and certain third parties. New data for compensation in excess of the \$150,000 threshold includes deferred compensation and benefit packages. These packages, which may include incentive and bonus payments, health care coverage, other fringe benefits, pension plans and golden parachutes, are important since they impact the financial capability of a non-profit. Board members, as well as others, are expected to use the information on the Form 990 to evaluate the ability of the non-profit to afford such compensation in light of revenues received.

Board members must consider compensation packages not only with respect to their affordability but with respect to how the organization benefits from such plans. Obviously, it is important to pay executives an amount that will allow the non-profit to attract and retain qualified employees; however, the

amount of pay should be balanced against the ability of executives to meet program benchmarks and the financial capability of the non-profit.

The new Form 990 makes it clear that Boards have a greater responsibility to evaluate executive performance and a greater responsibility to rely on surveys by independent parties, including committees, to ensure that pay is fair and reasonable.

In determining compensation, non-profits should always keep in mind that organizations supported by the general public are accountable to the general public. Recent scandals prove that accountability is not an afterthought. IRS will typically accept the reasonableness of compensation if the organization uses a deliberate process to determine it based on their needs and budget as well as the individual's qualifications and performance.

Who is a stakeholder?

Stakeholders include IRS, state government, watchdog groups, donors and the general public.

Will the new guidelines on reportable compensation apply to small organizations?

If an organization is not compensating anyone over \$100,000, the organization is only required to list all officers, directors, trustees and key officials in part seven, section A of the new 990. There is a \$10,000 trigger for former directors or trustees. A new definition for key officials can be found in the instructions.

What triggers the \$100,000 threshold?

Thresholds are tied to reportable compensation, i.e., amounts shown on the W-2.

Do the reporting requirements cover just 501(c)(3) organizations?

No. Reporting requirements now include all filing organizations, not just charities.

What about independent contractors?

Independent contractors who received more than \$100,000 are reported in part 7, section B of the new 990. Thresholds are tied to reportable compensation, i.e., amounts shown on the 1099.

Are there any other reporting thresholds?

The new 990 requires detailed compensation data in Schedule J for key employees earning more than \$150,000 annually in reportable (W-2) compensation from both the organization and related organization. The definition of a related organization is contained in the instructions. No more than 20 of those key employees need to be reported.

How is compensation calculated?

Compensation is calculated on a calendar year even if the organization budgets on a fiscal year.

Which individuals are considered former officers, directors, trustees, key employees and highest-compensated employees?

These individuals are labeled “former” if they should have been reported in any of the last five forms 990 as individuals with these designations and have reportable (W-2) compensation in the fiscal year for which the organization is filing.

Do we have to eliminate health care coverage and pension plans for executives?

No. The Board should decide if plans can be supported based on the organization’s budget. Review findings may lead non-profits to offer less costly plans.

Do we need to form a compensation committee?

You need to ensure that you have an independent means for evaluating compensation. Options other than committees include hiring outside experts and using data supplied by independent non-profits that provide support to other non-profits. One expected result of using Part 7 is that eventually comparability data will be accumulated.

Do we need to have written policies on compensation?

The new form asks non-profits to report if they have such policies. Boards are well advised to have written policies on reimbursement and documentation of expenses and to safeguard that expenses reportable as compensation are actually reported that way. While written policies on compensation and expense reimbursement are not mandated by IRS, policies can improve transparency, accountability, and consistency. Boards are expected to decide if written policies are appropriate.

Who should approve compensation?

The Board should approve compensation; however, any Board members with a conflict of interest should not be present during a vote.

How can I get more detailed help on completing the form?

The IRS website has detailed information on the new Form 990.

About the Author

Nancy Carver is a private consultant experienced in Business Planning, Organizational Planning, Human Resources and Emergency Management Planning. She has over 15 years experience working for the U.S. Internal Revenue Service (Real Estate, Tax Exempt and Government Entities (TE/GE) in Washington, DC before returning to her hometown, St. Louis.

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