

IMPACT OF FORM 990 CHANGES TO EXEMPT ORGANIZATIONS

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The proposed changes to Forms 990 and 990-EZ and the associated Schedules A and B will increase the burden on Exempt Organizations (EO) during the preparation of these returns. The changes mostly relate to compensation of directors, officers, trustees, key employees, and independent contractors, as well as foreign grants. The changes stem from concerns in Congress and at the IRS about potential abuses within the EO community.

Aside from the fact Form 990 will increase to eight pages from six and Form 990-EZ will be three pages instead of two, EOs will need to review the changes and perhaps make adjustments in their accounting procedures to capture the new information requested on the returns. The changes are summarized below:

Part III - Statement of Program and Service Accomplishments

As in previous years, the form requests the EO state its accomplishments. New language is added which reminds the EO that the return is open for public inspection and this section of the return in many cases is the sole source of information provided to third-parties about the activities of the EO. This is a good reminder because some EOs report a one sentence description of their accomplishments when they have associated expenditures in the hundreds of thousands of dollars. Clearly the more money spent on a program the more the EO should describe the program's accomplishment. Also, Forms 990 are readily available for inspection on the Internet (Guidestar plans to post non-charitable Forms 990 in the not-to-distant future), therefore, it behooves EOs to provide detailed and accurate information.

Another change within this part of the return is the addition of a question about foreign grants. The old form asked for the amount of grants only; however, the new form requires a box to be checked if the grants include foreign amounts. The increased scrutiny results from Congress' concern about potential financing of terrorist activities through foreign grants made by EOs.

Part V - Officers, Directors, Trustees, and Key Employees

This part has been split into two sections--Part V-A and Part V-B. Part V-A requests information about *current* officers, directors, trustees, and key employees and Part V-B requests information about *former* officers, directors, trustees, and key employees. The sectional split is clearly an indication that the IRS wants to collect additional information about EO compensation arrangements to guard against abusive compensation plans.

Changes to Part V-A include additional questions with regard to:

- total number of board members entitled to vote on the EO's business,
- relationships with highest paid employees and highest paid professional and independent contractors, if any,
- receipt of compensation from any other taxable or tax exempt organization that is related to the EO through common supervision or control, and
- whether or not the EO has a conflict of interest policy.

Part V-B is a new section that asks for compensation information for former officers, directors, trustees, and key employees. The same compensation information requested in Part V-A is requested in section two, as well as details about loans and advances.

Part IV - Other Information

This section contains two new questions regarding bank accounts and EO offices in foreign countries. The form notes that the EO may need to file Form TD F 90-22.1 to report information to the U.S. Treasury about its foreign bank accounts. These questions provide the information necessary for the U.S. Treasury to monitor cash transfers to foreign countries and they stem from concerns about potential EO support of terrorist organizations.

Schedule A, Part II - Compensation of Independent Contractors

Like Part V, Part II of Schedule A has been split into two sections. Part II-A asks for compensation paid the five highest paid independent contractors for *professional services* (such as legal, accounting, and consulting); whereas, Part II-B asks for compensation paid to the five highest paid independent contractors for *other services* (e.g., vendors). This change stems from Congress' desire to monitor potential conflicts of interest between the reporting EO and its service providers. Additionally, it should be noted for the first time, Part II-A and II-B are tied to Part V of Form 990 via the above-mentioned questions in Form 990, Part V-A.

Schedule A, Part III - Statement About Activities

New Question 3c asks for information regarding the receipt of qualified real property interest under section 170(h). Section 170(h) qualified real property interests are more commonly known as "conservation easements". The request is an attempt by Congress to curb the abuse in the area of charitable contribution deductions for conservation easements.

Supporting organizations are currently under the Congressional microscope, and an addition to Box 13 in Part IV of Schedule A asks supporting EOs (those designated as Sec. 509(a)(3) charities on their IRS determination letters) to indicate whether they are Type 1, Type 2, or Type 3. Each of these classifications refer to a specific type of control between the supporting organization and the EO it supports. As an EO's determination letter does not indicate "type" for purposes of this question, presumably the IRS will supply additional instructions when it issues Schedule A in final form.

Form 990-EZ

As with the Form 990, changes made to the 990-EZ include questions regarding foreign grants, as well as bank accounts and offices in foreign countries.

The summary of changes highlights the fact that EOs will be utilizing more time and resources to prepare the annual tax return. All EOs should begin thinking about the new information reporting requirements and work with their tax return preparers to make sure they are prepared to timely gather all of the information necessary to prepare an accurate Form 990.