



**Capital Area Chapter
National Association of Corporate Directors**

**Governing the Non-Profit Organization -
IRS Reporting Requirements**

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A long time coming....

The Perfect Storm!

The Congress, the IRS and now the FASB with FIN 48 are all in alignment on the core issues for tax-exempt entities – the need for....

Goals of the revised reporting requirements....

Transparency

Accountability

Efficiency

IRS position....

- Steven Miller, IRS Commissioner for Tax Exempt/Government Entities Division has stated that –
 - “...although the division doesn’t have audit plans concerning governance, the IRS will look at organizations’ answers to the governance questions on the revised Forms 990 for “governance gaps” that might signal potential abuse.....”
 - “It isn’t the existence of bad governance that’s become a problem, but the results of bad governance; however, the existence of [bad governance] might lead us to your doorstep.”
- In February 2008, the IRS released a staff discussion draft of good governance practices for charitable organizations, but later withdrew it because IRS positions are best reflected in the reporting required in the revised Form 990.
- Congress is proposing increased penalties for filing incomplete returns which includes failure to provide complete responses to a variety of leading questions.

Leading questions....

- Enter number of independent voting Board members.
 - Board independence defined:
 - The member was not compensated as a officer or employee of the organization or related organization
 - The member did not receive total compensation or other payments from the organization during the tax year greater than \$10,000 as an independent contractor
 - Neither the member nor any family member was involved in a transaction with the organization directly or indirectly
 - Independence is not impaired by being a donor or being a member of the charitable class that benefits from the organization's services.
- Does the organization have members who may elect one or more members of the governing body?
- Did the organization contemporaneously document meetings of the governing body/all committees (minutes during the meeting)?
- Was a copy of the Form 990 provided to the organization's governing body before it was filed?
- Organization must describe the process the organization uses to review the 990 in Schedule O.
- Organization must describe in Schedule O its process for monitoring the conflict of interest policy.

Leading questions....

- For the CEO, ED, Treasurer, and CFO, did the compensation process include review and approval by independent members of Board, comparability data and contemporaneous substantiation of deliberation and decision?
- Describe the compensation process in Schedule O.
- Does the organization have a written policy to evaluate joint ventures, taking steps to safeguard exempt status?
- Does the organization have a written whistleblower policy and document retention policy?
- Indicate how the organization makes its Forms 1023/1024, 990 and 990T available for public inspection – own website, another’s website (GuideStar), and upon request.
- Describe in Schedule O whether (and if so, how) the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.

Summary of policies and procedures....

- Examples of policies referred to in the revised Form 990:
 - Whistleblower
 - Document retention and destruction
 - Compensation and expense reimbursement
 - Board review of Form 990
 - Conflict of Interest and monitoring process
 - Joint venture participation and safeguarding exempt status
 - Public inspection of 990, 1023, 990T, financial statements, conflict of interest, governing documents
 - Political activity and lobbying
 - Post issuance review of tax exempt bonds
 - Gift Acceptance policies

Is your organization ready?

- **Plan ahead** for the new informational requirements to insure that the data can be readily obtained efficiently from the internal records.
- **Be prepared for additional potential IRS compliance checks** regarding endowment funds, scholarships and financial aid, compensation practices, community benefit, fundraising, political activity and lobbying to name a few.
- Insure that your mission statement and charitable activities descriptions have sufficient detail to **"impress" any reader** of the Form 990
- **Review policies and procedures** to insure that there will be adequate and appropriate responses to the questions on the revised Form 990.
- Generally, policies and procedures have to be **in effect** as of the end of the tax year that is being reported.
- Effective and robust policies and procedures are viewed as the **cornerstone** to good governance.
- Remember to **document in WRITING** and provide communication to staff and governing Board.