

Are You Ready for the New IRS 990 Reporting Requirements?

Jim Sorrentino

www.non-profit-consulting.org

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On August 19th, the IRS issued the final instructions for complying with the new 2008 IRS 990 reports. This is the first major change in reporting requirements in 30 years and parallels the Sarbanes-Oxley requirements for publically-owned corporations following the Enron scandal. The New York State Office of Attorney General- Charities Bureau also requires submission of the IRS 990 and they have been adding reporting requirements for all charities and specifically for non-profits that have funding contracts with NYS or local governmental units.

Congressional and IRS leaders have been highly critical of the growth and integrity of tax-exempt organizations following a number of high profile scandals that raised serious questions regarding high CEO compensation, lack of ethics and Board oversight and questions of fraud and the abuse. The new 990 requirements will provide the federal and state governments with a range of serious consequences for non-compliance as well as the detection of fraud, abuse, errors and omissions.

What are the consequences of non-compliance with the new IRS 990s? The ultimate consequence for over 1.8 million non-profit organizations is the loss of your tax exempt status, which effectively will terminate an organization. Less fatal consequences can include IRS audits; negative independent audit reports to your Board and government funders; negative publicity to your current and prospective donors; negative publicity from charity rating agencies such as GuideStar and Charity Navigator; negative performance reviews and strained relations with your Board of Directors.

In addition to the significant non-compliance consequences, your organization and potentially you and other officers can be held legally responsible for fraud and abuse by providing false information on federal and state filing forms. Keep in mind, your independent auditor is responsible for the verification of your responses.

While the new IRS 990 and associated NYS reporting requirements are significant, all organizations can minimize negative consequences if you are pro-active, complete a self-assessment and implement needed compliance changes prior to your 2008 independent CPA audit and 990 filing. This requires your awareness, assessment and action.

The new IRS 990 requirements were issued in December, 2007 and your CPA audit firm should have shared the new reporting requirements when they presented their 07 audit report with you and your Board this Spring. The new 990 for 2008 requires detailed information on salary and benefits (including health and retirement) from all related organizations to key employees, fundraising expenses and public contributions, noncash contributions, loans, tax-exempt bonds and lobbying activities and expenses. Your accounting software programs may have upgrades to capture new information that is required on 990s.

In addition, the new 990 requires that you to disclose the presence, absence and monitoring of various policies and procedures including: conflicts of interest, related party transactions, self-dealing,

whistleblower protection, document retention and destruction, market-based compensation studies for key employees, joint ventures with taxable organizations, documentation of Board meetings and actions, public disclosure of financial statements and governing documents, and your Board's review of your organization's 990 before it is filed with the IRS.

The amount of compliance work you need to do before your 08 independent audit will vary based on your organization's size, level of executive compensation, field of work, level of preparation, time and in-house expertise that you have present.

In summary, the consequences of non-compliance are substantial. You should immediately assess what you need to do to be in full compliance with the new 990s. New Board and employee policies, procedures and monitoring requirements will take time to develop, educate both employees and Board why these are needed and have them reviewed, approved and implemented before your next 990 is prepared.

Based on your organization's needs, capacity and time constraints; you may want to consider engaging a general or specialty consultant(s) to help you comply with these new IRS accounting, legal, governance and human resource compliance requirements.

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