**IRS Form 990: A Refresher on Plan Governance and Key Financial Disclosures**

*by Patrick C. Stines*

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### Form 990

**Part I: Summary**

Briefly describe the organization’s mission or purpose.

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**Form 990**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code, the organization may have to use a copy of the return to file a report or to apply for recognition of exemption.

**A For the 2012 calendar year, or tax year beginning**

- **C Name of organization**
  - Doing Business As
  - Number and street (or P.O. box if mail is not delivered)
  - City, town or post office, state, and ZIP code

- **F Name and address of principal officer:**

**I Tax-exempt status:**

- 501(c)(3)
- 501(c)(

**J Website:**

**K Form of organization:**

- Corporation
- Trust
- Association
- Other

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The IRS 990 Information Return says more than it used to. This article reviews what health and welfare benefit plans are now required to report on the IRS Form 990.

Under the Internal Revenue Code, collectively bargained health and welfare plans generally are classified as voluntary employees’ beneficiary associations (VEBAs), which are tax-exempt under Code 501c(9). Internal Revenue Service (IRS) Form 990 is the annual information return that must be filed by most organizations exempt from income tax under the Code.

In 2008, IRS revised the Form 990, significantly expanding the disclosure requirements in many areas, including plan governance, executive compensation and related party transactions. This article highlights some the key points of the expanded reporting requirements and may serve as a reference tool that administrators and trustees can use in discussions with their certified public accountants (CPAs) and legal counsel.

Plan Governance

In response to public instances of mismanagement at certain nonprofit organizations, the revised Form 990 contains a series of questions pertaining to an entity’s policies and procedures in the areas of governance with the goal of greater transparency into an organization’s management practices.

Although current tax law generally does not mandate specific organizational structure and policies, the Form
990 instructions state that IRS considers such policies to enhance tax compliance. Although it is not IRS’s job to determine those practices, the Form 990 is a tool it uses to evaluate the plan’s compliance with tax laws and regulations.

Form 990 questions primarily are contained in Part VI: Governance, Management and Disclosure. In this section, the plan must answer a series of yes or no questions and, where applicable, provide narrative disclosures in Schedule O—Supplemental Information.

Part VI contains 20 questions divided into three subsections:

1. Governing body and management
   - Trustee independence
   - Family or business relationships with other officers
   - Changes in governing documents
   - Authorization and documentation policies.

A plan must disclose the number of board members and how many of them are independent. Determination of trustee independence encompasses the issue of trustee compensation from the plan (and related entities) and certain other financial arrangements between a trustee and the plan.

Plans must disclose whether any of their officers, directors, trustees or key employees have a family or business relationship with each other. Details must be disclosed in Schedule O—For example, the salaried fund administrator is the son of a trustee or the plan pays a consulting firm owned by a trustee for services to the plan.

Also, the Form 990 mandates the reporting of changes of governing documents to IRS. This would include plan and trust amendments.

2. Policies
   - Conflict of interest
   - Whistle-blower
   - Document retention
   - Executive compensation.

Initial reaction to these inquiries was mixed. Certain plan boards held the position that following the provisions of ERISA was, in fact, addressing the areas of these policies and stated such in Schedule O. Other boards adopted certain policies in response to the 990 questions.

Again, current regulations do not require written policies. However, IRS officials speaking at accounting and other conferences have repeatedly stated they will be looking into the responses of these Form 990 governance questions. Written policies often provide clearer insight as to management intent versus verbal ones.

3. Disclosure
   - Public disclosure methods.
     (How can plan participants easily get a copy of the Form 990?)

Executive Compensation

Form 990 requires compensation reporting for these groups of people:

- Current officers, directors and trustees
- Current key employees ($150,000 in total compensation and managerial authority)
- The plan’s five highest compensated current employees with reportable (W-2) compensation in excess of $100,000 from the plan and any related entities (e.g., labor trustee salary from union)
- Former officers, directors, trustees and key employees with reportable compensation in excess of $100,000 from the plan and any related entities acting in the capacity of an officer at any point during the reporting period
- Former officers, directors, trustees and key employees with reportable compensation in excess of $10,000 from the plan and any related entities acting in the capacity of a former official.

The form requires compensation to be reported in three categories:

1. Reportable compensation (as per the latest filed Form W-2 or 1099)
2. Reportable compensation from a related organization in excess of $10,000
3. Other compensation (e.g., nontaxable medical premiums).

Third-party administrators (TPAs) generally would be classified not as plan officers, but as independent contractors. However, a key employee of a TPA can be classified as a plan official if his or her duties are akin to an internal fund manager. The plan also has the option of clarifying any compensation in Schedule O.

Expanded and more detailed compensation disclosures are also required in Schedule J—Compensation Information.

**Fringe Benefits**

Schedule J begins with a series of questions asking whether the plan provides certain benefits including but not limited to:
- First-class travel
- Travel for companions
- Personal services.

Plans answering yes to any of these items need to provide additional disclosure of policies, including the existence of written payment policies and substantiation guidelines.

**Compensation Methodology**

Schedule J also asks if the plan used any of the following methods to determine compensation:
- Form 990 of comparable entities
- Independent consultant
- Board approval
- Written employment contract
- Compensation study.

**Expanded Officer Compensation Details**

Certain officers already reported in the main section of Form 990 (see Executive Compensation above) are reported again in Schedule J if they fall into the following categories:
- Former officers, trustees or key employees
- Individuals whose total reported compensation is greater than $150,000
- Individuals receiving compensation from an unrelated organization for services rendered to the plan. *Note that this does not include employer trustees who are receiving their normal salary for time spent in a trustee capacity at no charge to the plan.*

Schedule J requires additional breakdown of W-2 and/or Form 1099 amounts and other categories as follows:
- Base compensation
- Bonus and incentive compensation
- Other reportable compensation (e.g., cashed-out sick or vacation pay, taxable life insurance)
- Retirement and other deferred compensation (e.g., defined benefit pension and severance accruals)
- Nontaxable benefits (e.g., medical premiums).

It is important to note that pension and severance accruals do not reflect amounts actually paid. Pension accruals include the annual increase in the actuarial value of the participant’s expected obligations and the value of the expected future severance payout for current service.

**Related Party Transactions**

A listing of all known transactions with related parties are disclosed in Schedule R—Related Organizations and Unrelated Partnerships.

Schedule R requires a listing and certain demographic information of related entities. The current instructions define a related organization as an entity standing in one or more of the following relationships with the plan:
- Parent organization that controls the plan
- Subsidiary organization that the plan controls
- Brother/sister organization controlled by the same body
- Sponsor organization of a 501c(9) VEBA:
  —Union
  —Board of trustees

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**Education**
Benefit Plan Professionals Institute for Accountants
September 16-18, Boston, Massachusetts
Visit [www.ifebp.org/professionals](http://www.ifebp.org/professionals) for more information.

**Certificate Series**
September 30-October 5, Seattle, Washington
Visit [www.ifebp.org/certificateseries](http://www.ifebp.org/certificateseries) for more information.

**From the Bookstore**
—Contributing employers. (The plan needs to report only the names and is not required to report other additional information required for other related organizations.)

The instructions define control as the ability to appoint a majority of the plan’s trustees. This definition comes into consideration for plans not qualified under 501c (9) (e.g., apprentice programs), where a particular entity appoints only 50% of the board’s members. As mentioned above, the union and contributing employers are specifically mentioned as related organizations to 501c (9) VEBA plans.

Schedule R also requires reporting of transactions with related parties and the amounts involved classified into certain categories including but not limited to:
- Leasing or rental arrangements (e.g., the plan rents space from the union)
- Sharing of paid employees (e.g., common expense allocations)
- Performance of services (e.g., common expense allocations).

**Contributing Employers**

A health and welfare plan must provide a listing of its contributing employers in Schedule R. The current instructions require only the name and state of legal domicile whereas prior years’ instructions required additional demographic information that may have been quite burdensome for the plan to obtain.

**Additional Disclosures**

Certain responses to questions in other areas of the form require additional narrative disclosures in Schedule O.

Form 990 filers also have the option of providing supplemental insight or clarification to any other questions in the form. This is where plan management can provide unique circumstances relevant to its plan in order to enhance disclosure and eliminate potential confusion by someone reading the Form 990. Examples of supplemental disclosures include:
- Relevant information supplementing “no” responses to governance and policy questions reported in Form 990 Part VI regarding:
  - Hours worked
  - Expense and other transaction approval practices
  - Relevant cost-sharing arrangements
  - Compensation practices. (Narratives also can be provided in Schedule J.)

- Expanded detail on accounting items classified as “other.”

Schedule D includes a section with a reconciliation of the Form 990 to the plan’s audited financial statements. Differing accounting classifications can occur in the following areas:
- Unrealized investment gains not reported as Form 990 income
- Investment expenses reported as a reduction of income on the financial statements
- Claims liabilities not reported directly on the plan’s balance sheet
- Prior period adjustments.

**Best Practices**

Timing is everything. Administrators and trustees should meet with their CPAs well in advance of the filing deadline (e.g., November 15) to discuss the required disclosures and information needed to comply.

Administrators and trustees should review the proposed disclosures with plan counsel regarding governance matters and other disclosures issues. The answers to these Form 990 questions are publicly available. They are used by IRS, plan participants, competing labor factions and any other members of the public looking to evaluate, or even criticize, the fiduciary actions of the board.

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Patrick C. Stines, CPA, is a partner at Bollam, Sheedy, Torani & Co. in New York City. He has nearly 15 years of experience in public accounting, working exclusively with Taft-Hartley employee benefit plans and labor unions. Stines earned a B.S. degree from State University of New York at Old Westbury. He can be contacted at pstines@bstco.com.