



Compensation Insight

IRS Form 990 Redesign Initiative

Overview

This summer is proving to be one of intense regulatory focus for not-for-profit healthcare organizations. In addition to proposed transparency reforms by the Senate Finance Committee; and another potential GAO survey focused on community benefit and corporate governance, sweeping changes are being proposed by the IRS for Form 990 reporting.

These proposed changes—released earlier in the summer—are subject to comment and review, and may be instituted as early as the fiscal year beginning in 2008. Among other objectives, the proposed Form 990 changes are in response to calls for greater transparency, and will significantly affect the reporting of executive compensation information.

Specifically, regarding a May 2007 letter from the Senate Finance Committee to the Treasury Secretary, Senator Grassley stated that, “It can be easier to understand how much a Fortune 500 executive is paid than how much a charity is compensating [its] executives due to the shell games that go on in some cases.” The Senator went on to say that misrepresentation of executive compensation information “undermines the mission of non-profits and fosters a public cynicism that is detrimental to all charities....”

According to the IRS, the proposed Form 990 changes are intended to shed more light on the structure and content of executive pay programs in not-for-profit organizations. In response to the Senate Finance Committee’s concerns, the IRS

indicated in a June 2007 letter that “the new Form 990 we have proposed will strengthen our ability to monitor [executive compensation],” as well as improve the transparency of the information provided to the public at large.

Although the Form is currently a draft (the Service is taking comments until mid-September), there are a number of compensation-related questions that we suggest you review in advance of your 2008 tax year.

Covered Positions

The disclosure requirements are proposed to be extended to:

- All current officers, directors and key employees (regardless of compensation).
- The five highest compensated employees (other than an officer, director or key employee) who received \$100,000+.
- Former officers, key employees or highest compensated employees who received \$100,000+.
- Former directors who received \$10,000+.

Proposed New Schedules

The proposed Form 990 will have several new schedules, including three of particular note, as follows:

Section	Description
Schedule H: Hospitals	<ul style="list-style-type: none"> • Must be completed by any organization operating a facility that provides health or medical care. • Requests very detailed information on charity and community benefit policies and practices, as well as other measures that would further justify exempt status.
Schedule J: Compensation	<ul style="list-style-type: none"> • Applies to organizations that pay more than \$150,000 in reportable compensation, or \$250,000 in total compensation, to at least one individual. • Requests detailed information on various types of compensation, such as first-class travel, club dues and use of personal residences.
Schedule L: Supplemental Information on Loans	<ul style="list-style-type: none"> • Requires detailed information on loans to/from officers, directors, trustees, and other disqualified persons.

Proposed New Compensation Questions

For officers and highly compensated employees, organizations will be required to provide more detailed compensation and benefits information for their officers, executives and/or highly-compensated employees. This information includes:

- Base compensation.
- Bonus and incentive compensation.
- Severance or change-in-control provisions.
- Any other reportable compensation (included on Form W-2 or Form 1099-MISC).
- Nontaxable benefits.
- Nontaxable expense reimbursements.
- Non-qualified deferred compensation/SERP payments.
- Any equity-based compensation.

The proposed Form 990 will also include a series of proposed “yes or no” questions, as summarized below:

“Yes or No” Questions		
Subject	Question	Implication
Committee or Board Deliberation	For the CEO, Executive Director, Treasurer, and CFO...Did the process for determining compensation include a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision?	Requires formal response as to whether an organization followed the procedures for the establishment of the rebuttable presumption of reasonableness. Organizations should review the process of compensation approval for key executives.
Governing Body Review of Form 990	Did the organization’s governing body review this Form 990 before it was filed?	Requires formal response from the organization on whether Form 990 (including compensation information) was reviewed prior to filing at the Board level to ensure accuracy in public reporting.
Expense Reimbursement	Did the organization implement and follow a written policy regarding payment or reimbursement of travel and entertainment expenses incurred by officers, directors, trustees or other employees?	Not only will organizations be encouraged to have an expense reimbursement policy, but they will need to certify that they followed the policy.
First-class Travel, Club Dues, or Use of Personal Residence	Did the organization pay or reimburse [employees] for first-class travel, club dues, or use of a personal residence?	Organizations will need to pay closer attention to these practices to substantiate their business need. At a minimum, a process for monitoring and tracking these reimbursements will be necessary.
Compensation Determined by Either the Revenues or Net Earnings of the Organization	Were persons listed in Form 990 paid or accrued compensation (in whole or in part) based on either revenues or net earnings?	Organizations may wish to review their incentive plans as a result of this question.
Non-fixed Payments Not Determined by Revenue or Net Earnings	Were any “non-fixed” (i.e., discretionary) payments made to any persons listed in Form 990?	Again, organizations will need to respond on variable or incentive compensation programs that are affected by organizational or individual executive performance, or on other types of non-fixed payments.
Initial Contract Exception	Were any amounts paid or accrued pursuant to a contract that was subject to the initial contract exception described in the regulations?	Boards will want to monitor these situations, and take particular notice of when the initial contract exception expires.

Other Questions

The Service is also proposing to ask questions regarding:

- The number of individuals receiving compensation in excess of \$100,000.
- Officer, director, trustee and other key employee compensation (total) as a percent of total program service expenses.

What Should Your Organization Do?

Even though the Form 990 is still in the draft stage, it is clear that the IRS continues its high interest in executive compensation practices and related governance procedures. No matter what shape the Form 990 ultimately takes, we suggest that organizations carefully review these issues before the start of their fiscal 2008 year. Also, remember that any comments on the proposed Form 990 must be submitted to the Service by September 14, 2007.

For further assistance, contact your SullivanCotter consultant today.

About Sullivan, Cotter and Associates, Inc.

Since 1992, SullivanCotter's innovative yet practical compensation solutions have created tremendous value for the healthcare organizations it serves. In this capacity, SullivanCotter specializes in the development and implementation of strategic compensation and reward programs for its healthcare clients.

As a leader in healthcare executive, physician and employee compensation consulting, SullivanCotter has served many of the nation's leading and largest health systems, academic medical centers and community healthcare organizations, and has developed some of the top healthcare compensation surveys in the United States.

SullivanCotter strives to help our healthcare clients develop and implement creative, comprehensive and compliant compensation programs that bridge the needs of organizational stakeholders.

SullivanCotter has offices in Atlanta, Boston, Chicago, Dallas, Denver, Detroit, New York, Parsippany, San Francisco and Westport.

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