Internal Revenue Service

Form 990 Redesign for Tax Year 2008

Background Paper

December 20, 2007

Overview

On December 20, 2007, the IRS released the redesigned Form 990, *Return of Organization Exempt from Income Tax* (2008 Form 990). The new form incorporates many recommendations made in public comments on the discussion draft ("Discussion Draft") released on June 14, 2007. Organizations will begin using the new form for the 2008 tax year (returns filed in 2009). The IRS expects to release draft instructions for the new form and schedules in early 2008. The current Forms 990 will be used for tax year 2007 (returns filed in 2008) but will not be available for use beginning with the 2008 tax year.

Form 990-EZ will be retained in its present form. However, some of the new schedules implemented for the Form 990 Redesign will be adopted for the Form 990-EZ to replace certain attachments (see "Form 990-EZ – Highlights" for more information).

The 2008 Form 990 retains the general content and structure of the Discussion Draft, including a core form to be completed by all organizations, and schedules to be completed depending on an organization's type and activities. All proposed schedules are retained and a new Schedule O, *Supplemental Information to Form 990*, is added to allow organizations to supplement information reported elsewhere on the form.

The IRS will allow for transition relief for smaller organizations by phasing-in the requirement to file the new form over a three-year period. These organizations will be allowed to file the Form 990-EZ in lieu of the Form 990. For the 2008 tax year (returns filed in 2009), organizations with gross receipts less than $1.0 million and total assets less than $2.5 million may file the Form 990-EZ. For the 2009 tax year (returns filed in 2010), organizations with gross receipts less than $500,000 and total assets less than $1.25 million may file the Form 990-EZ. The Form 990-EZ filing thresholds will be adjusted permanently to gross receipts less than $200,000 and total assets less than $500,000 beginning with 2010 tax years.

Transition relief will also be provided for Schedule F, Statement of Activities Outside the United States, Schedule H, Hospitals, and Schedule K, Supplemental Information on Tax Exempt Bonds. Group returns will continue to be allowed.

Reasons for Redesign and Guiding Principles

The Form 990 has not been significantly revised since 1979 and it is universally regarded as needing major revision. It has failed to keep pace with changes in the law and with the increasing size, diversity, and complexity of the exempt sector. As a result, the current form fails to meet the Service's tax compliance interests or the transparency and accountability needs of the states, the public, and local communities served by the organization.

The Discussion Draft revised the format and content of the form based on three guiding principles: enhancing transparency, promoting tax compliance, and minimizing burden on the filing organization. Some of the major features of the Discussion Draft included a summary page, a governance section, more extensive reporting of compensation and relationships with other entities for some organizations, and new reporting for tax-exempt bonds, foreign activities, non-cash contributions, and hospitals. The Service released the Discussion Draft for a 90-day comment period, and specifically requested comments regarding burden, filing thresholds, the summary page and governance section, related organizations, the hospital schedule, privacy concerns, group returns, and the need for transition relief.

Public Comments on Discussion Draft

The IRS received over 650 e-mails and letters regarding the Discussion Draft. The comments covered a wide array of topics, including format, structure, content, and implementation concerns. Major groupings of comments include:

- Reorder the core form;
- Provide for narrative explanations and supplemental information to explain an organization's operations and its responses to the form's questions;
- Modify the summary page to provide more useful information that is objective and not judgmental;
- Restore "other compensation" to the core form, allow organizations to continue to choose between fiscal year or calendar year amounts when reporting compensation, and do not extend compensation reporting for highest compensated employees to non-501(c)(3) organizations;
- Modify governance questions;
- Reconcile financial reporting with Form 990 reporting;
- Reduce risk to safety and security of individual;
- Continue to permit the filing of group returns;
- Minimize reporting burden;
- Provide time for organizations to modify reporting systems and retain Form 990-EZ; and
- Modify schedules for hospitals and tax-exempt bonds and provide transition relief.

As a result of these comments, significant changes were made to the Form 990 as well as a number of schedules. These changes are discussed in the separate "Highlights" document for the core form and each schedule. The major groupings of comments are discussed below.

Reorder the Core Form
The public comments supported the structure of a summary page, core form, and schedules. Commentators consistently asked that the organization be allowed to "tell its story" before reporting other information.

The 2008 Form 990 adopts this recommendation. The Statement of Program Service Accomplishments is moved to the front of the form. In addition, all questions regarding general activities and tax compliance are consolidated, and executive compensation, governance and other financial statement information sections are moved to the back of the form. The revised order of the new form is as follows.

- *Part I, Summary*, provides the organization's identifying information and a snapshot of key financial, governance and operating information, including a summary of mission or activities. A two-year comparison of revenues and expenses is reported for the current and prior year.
- *Part II, Signature Block*, was moved to the bottom of Page 1.
- *Part III, Statement of Program Service Accomplishments*, includes reporting of new, discontinued, or altered program services.
- *Part IV, Checklist of Required Schedules*, contains the list, in schedule sequence order, of all questions required to determine which schedules must be completed by an organization.
- *Part V, Statements Regarding Other IRS Filings and Tax Compliance*.
- *Part VI, Governance, Management, and Disclosure*, requires reporting regarding governing body composition, and certain governance and disclosure policies and practices.
- *Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors*.
- *Part VIII, Statement of Revenues*.
- *Part IX, Statement of Functional Expenses*.
- *Part X, Balance Sheet*.
- *Part XI, Financial Statements and Reporting*, requires reporting of certain information regarding financial statement compilations, reviews, or audits.

Provide for Narrative Explanations and Supplemental Information
Many commented that the Discussion Draft did not provide sufficient opportunity to explain the organization's operations or responses to various questions. Additional space was requested.

Organizations filing electronically expressed concern about the inability to provide additional information or to structure such information. Many requested the ability to attach Portable Document Format (PDF) items, and some requested the ability to provide links to website information.

In response to the public comments, the current form's "general explanation attachments" were consolidated and moved to a new Schedule O*, Supplemental Information to Form 990*. Additional space also was added to several schedules so that narrative information can be provided close in proximity to the related question. As a result of these changes, an electronic filer will have up to two 'pages' to respond to each question or item, and two additional 'pages' to provide other information not required by the form. And an "attachment" for each line requiring an explanation, referring to the form's specific line number, will be created.

The 2008 Form 990 does not provide for attachment of PDF items or links to websites. The IRS will continue to study the feasibility of these suggestions.

Modify Summary Page

There was universal support for eliminating measures of percentages and ratios from the summary page, including those analyzing sources of revenues, the allocation of functional expenses, fundraising, compensation, and the relationship between assets and amounts expended. Nearly all who commented on the summary page criticized the proposed measures as providing an incomplete picture, being subject to manipulation or misinterpretation by filers and users, and creating an implication that particular measures were more important than items not reported on the summary page. Many stated that these measures had no connection to the form's tax compliance function. Others commented that much of the information contained on the summary page only focused on 501(c)(3) and 501(c)(4) organizations, meaning that approximately 25% of all filing organizations would not complete large portions of Page 1.

As a result of these comments, all percentage and ratio measures were eliminated from the summary page. To highlight trends and changes, a column for the prior year's revenue and expense information was added to display a two-year comparison of summary financial information. Reporting by expense type, similar to the Form 990-EZ format, replaced reporting by functional classifications, making the summary page's expense reporting more appropriate for all types of organizations.

Other Compensation, Fiscal Year Reporting, and Highest Compensated Employees of Non-501(c)(3) Organizations

The Discussion Draft proposed requiring reporting of compensation on a more uniform and objective basis through the use of Form W-2 and Form 1099-MISC amounts. Many recommended preserving current reporting flexibility that allows a fiscal year organization to elect to report compensation on either a calendar or fiscal year.

The Discussion Draft eliminated the reporting of "other compensation" on the core form. Many recommended restoring reporting of other types of compensation in order to provide a more complete picture of compensation packages for those who use Form 990 to assess compensation comparability across types of organizations.

The new form retains the use of Form W-2 and Form 1099-MISC amounts, but provides for separate reporting of other compensation (e.g., contributions to retirement plans and health plans). A new column on Schedule J eliminates duplicate reporting of deferred compensation. An organization whose tax year ends on a date other than December 31 must report on a calendar year basis.

Some non-501(c)(3) organizations objected to the expansion of compensation reporting for the five highest compensated employees to such organizations, stating that no compelling tax compliance or transparency interest was being served by such reporting. The new form retains the reporting of such information by such organizations for those employees, in order to obtain information required to enforce the private inurement prohibition and exempt purpose requirements for such organizations.

Modify Governance Questions

The Discussion Draft added a new section on governance, management and financial reporting. Many found certain of the proposed governance questions ambiguous and recommended alternative or additional questions. A significant number recommended that the form explicitly state that particular governance questions pertain to good or best practices rather than to items required by tax law. Some suggested breaking the questions into distinct parts and providing an opportunity to explain the responses. A few stated the IRS does not have the legal authority to ask governance questions and recommended eliminating the governance section.

The new form's governance section adopts many of these comments by revising and adding questions, breaking the section into three sub-parts (governing body, policies, disclosures), clarifying that many reported items are not legally required, and requesting supplemental information to explain responses to questions.

Reconcile Financial and Tax Reporting

Consolidated Form 990 reporting is not currently allowed and the Discussion Draft did not propose to allow such reporting. Many commentators recommended allowing consolidated Form 990 reporting and stated that the form should have to be completed in accordance with generally accepted accounting principles (GAAP). Others commented that the reconciliations of revenues, expenses, and changes in net assets between Form 990 reporting and financial statement reporting need to be clarified.

The IRS believes that two significant issues preclude consolidated reporting in the near future. First, consolidated financial reporting in accordance with GAAP allows for the inclusion of entities not recognized as tax-exempt as well as entities recognized as exempt under different Code sections. Second, except for organizations subject to a group ruling, tax exemption is granted on an organization by organization basis, which requires an organization to report information regarding its own particular activities. Thus, while it is true that confusion continues in comparing an organization's financial statements to its Form 990, permitting consolidated reporting would adversely impact transparency with respect to a specific entity's reporting.

Many organizations report their financial information on Forms 990 in accordance with GAAP, particularly if they have obtained audited financial statements. However, organizations who are not required to prepare audited financial statements generally do not report on a GAAP basis. The IRS intends to study both consolidated and GAAP reporting of financial information with respect to Form 990 reporting to improve the ability to compare the Form 990 information to an organization's financial statements.

Reduce Risk to Safety and Security of Individuals

Three areas of the Discussion Draft generated comments regarding privacy, safety or security concerns. First, the Discussion Draft proposed requiring the personal addresses of individual officers, directors, trustees, key employees and highest compensated employees rather than permitting use of the organization's address. Many opposed this change due to privacy concerns. The new form does not require personal addresses of individuals in the compensation section, but permits organizations to provide an alternative address for those individuals who may not be reached at the organization's address.

Second, while the IRS did not propose changes to the use of social security numbers (SSNs) by paid preparers, many requested the reference to SSNs in the signature block be eliminated due to concerns about identity theft. In response to this concern, the new form eliminates the preparer's SSN from the signature block. The instructions will be revised to promote the use of practitioner taxpayer identification numbers (PTINs) instead of a paid preparer's SSN.

Third, Schedule F, *Statement of Activities Outside the United States,* proposed that an organization list each foreign country in which it conducted activities and requested the name of foreign grantees. This raised concerns about the personal safety of workers, volunteers, and others involved in an organization's work in certain unsafe foreign areas. Many suggested that the Schedule F not require reporting for each country, not be publicly disclosed, have certain identifying information redacted from public disclosure, or be delayed.

The IRS may not redact or withhold from public disclosure information reported on the Form 990 unless it is expressly authorized by statute. Because this authority currently does not exist for the information requested by Schedule F, the 2008 Form 990 Schedule F will require reporting on a regional basis (rather than on a country-by-country basis), and will not require reporting of certain identifying information of the grantee. If redaction or withholding from public disclosure becomes feasible in the future, Schedule F will be modified to require reporting on a country-by-country basis, as well as more specific grantee information.

Retain Group Returns

The group return process permits a parent organization to file a group return for all of its subsidiaries that are included under the parent's group exemption number. Because the parent must file its own Form 990, the process results in two returns – one for the parent and one for all subsidiaries under the group exemption that elect to be included in the group return. The IRS is concerned about the lack of transparency resulting from the group return process, and also has experienced administrative difficulties monitoring whether group returns include all elected subsidiaries and whether the remaining subsidiaries are filing a separate Form 990, when required.

The Discussion Draft proposed eliminating group returns. Several organizations, including fraternal organizations with hundreds or thousands of small subsidiaries, recommended that the IRS continue to allow group returns. These organizations commented that eliminating group returns would substantially increase the cost and administrative burden associated with completing separate returns for each member of the group. Some offered to work with the IRS to improve the identification of group members so that the IRS can more easily track which members have been included in a Form 990 filing. Based on these responses, group returns will be allowed, and the IRS will work with the sector to study changes to group return filing processes and requirements.

Minimize Reporting Burden

The IRS was aware that many organizations did not provide information required in various attachments required in the current form. Many commentators stated that the Discussion Draft increased the reporting burden for many organizations. Hospitals, colleges and universities commented that they would be affected disproportionately by new or modified reporting requirements for related organizations, executive compensation, foreign activities, hospitals, and tax exempt bonds.

In response to these comments, the 2008 form has revised reporting of many items to reduce reporting burden for many organizations.

Revised reporting requirements include:

- Schedule C, *Political Campaign and Lobbying Activities* – eliminated reporting of lobbying activities by non-501(c)(3) organizations;
- Schedule D, *Supplemental Financial Statements* – eliminated reporting of investments and other assets on an asset-by-asset basis;
- Schedule F, *Statement of Activities Outside the United States* – replaced country-by-country reporting with regional reporting;
- Schedule G, *Supplemental Information Regarding Fundraising or Gaming Activities* – bifurcated reporting of fundraising events from reporting of gaming activities;
- Schedule H, *Hospitals* – eliminated the proposed Part II billing and revenue table and simplified facility information reporting;
- Schedule J, *Supplemental Compensation Information* – eliminated reporting of amounts of de minimis fringe benefits and expense arrangements;
- Schedule K, *Supplemental Information on Tax Exempt Bonds* – eliminated reporting for bonds issued before 2003 and third-party compensation; revised reporting of use of proceeds and private use;
- Schedule L, *Transactions with Interested Persons* (formerly *Loans*) – eliminated several information items for reporting on loans;
- Schedule M, *Non-Cash Contributions* – combined clothing and household items, eliminated reporting of quantities for small value items typically donated to thrift stores, and reduced required information generally;
- Schedule R, *Related Organizations and Unrelated Partnerships* – eliminated certain transfers between (c)(3) organizations and reporting for transfers from (c)(3) organizations to other tax-exempt organizations if transferee organizations are not related; reduced information to be reported in Part V table; and
- Established or modified thresholds for various schedules, including for:
    - Schedule D, Parts VII-IX (no asset type breakdown required unless the asset category comprises more than 5% of total assets)
    - Schedule F, Part I (established $10,000 minimum of aggregate revenue or expenses before reporting is required)
    - Schedule G, Parts I-III (established $15,000 minimum expense or revenue threshold before reporting is required)
    - Schedule H, Part IV (increased aggregate ownership percentage below which reporting is not required from 5% to 10%)
    - Schedule M (increased threshold below which reporting is not required from $5,000 to $25,000 aggregate non-cash contributions)

  - Schedule R, Part V, Question 2 table (established \$50,000 per transaction, per organization threshold before table must be completed for a transaction type)

Provide Time to Modify Reporting Systems and Retain Form 990-EZ
When the Discussion Draft was released, the Service requested comments about eliminating the Form 990-EZ and eventually replacing it with some part of the redesigned Form 990. Many commented that the Discussion Draft increased reporting burden for small organizations; others said they would need additional time to establish or modify reporting systems to enable completion of the new form. Many requested that implementation of the Form 990 redesign be delayed for one or two years and that the filing thresholds be increased for the Forms 990, 990-EZ, and 990-N.

In response to these comments, the IRS is retaining the current Form 990-EZ. However, the IRS is not able to delay implementation because of the IRS' overall information systems modernization schedule. The IRS believes that the benefits of immediate implementation of the new form are substantial, and that the concerns mentioned above will be addressed by other means. To address transition concerns, the 2008 Form 990 will be phased-in over three years. This will be accomplished by allowing many small organizations to file the Form 990-EZ, rather than the new Form 990, for 2008 and 2009.

Beginning with 2008 tax years, an organization may file a Form 990-EZ (rather than a Form 990) if it satisfies both the gross receipts and assets tests set forth in this table.

May file 990-EZ for:	***If gross receipts are:***	***If assets are:***
2008 tax year (filed in 2009)	> \$25,000 and < \$1 million	< \$2.5 million
2009 tax year (filed in 2010)	> \$25,000 and < \$500,000	< \$1.25 million
2010 and later tax years	> \$50,000 and < \$200,000	< \$500,000

This graduated phase-in of the new form will provide many organizations an opportunity to choose to file either the new Form 990 or a Form 990-EZ for 2008 and 2009 tax years.

In addition, the IRS intends to increase the gross receipts threshold for the new, Congressionally mandated Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ* from \$25,000 to \$50,000 beginning with tax year 2010 (filed in 2011 and later). The e-Postcard is required for tax year 2007 (filed for the first time in 2008). The IRS considered raising the e-Postcard threshold for tax year 2008 but decided that this would create much confusion since all outreach and communications efforts have stressed the $25,000 threshold. The IRS also understands that some States may need to seek legislative changes in order to change filing thresholds.

Modify Schedules for Hospitals and Tax Exempt Bonds and Provide Transition Relief

The Schedule H, *Hospitals*, and Schedule K, *Supplemental Information on Tax Exempt Bonds*, proposed reporting of information not required currently. The IRS requested comments regarding the need for transition relief with respect to these schedules. Many recommended a delay of up to two years before implementing these schedules to provide organizations sufficient time to implement or modify information gathering and reporting systems required to complete portions of these schedules. Based on our discussions with the sector and the expressed need for transition relief, Schedules H and K will be phased in beginning in 2008, by requiring basic identifying information for each of the two schedules.

Schedule H, Part V requires a listing of all hospitals and other medical care facilities operated by the organization, as well as certain identifying information regarding each listed facility (e.g., status as a critical access hospital or a teaching hospital). Completion of Part V does not raise the burden and transition concerns that may exist with respect to other parts of the schedule. Accordingly, Part V will be required to be completed by all organizations beginning with 2008 tax years, and all other parts will be optional for 2008. All parts of Schedule H will be required beginning with 2009 tax years. The IRS believes that eliminating the Part II Billing table from the June Draft and numerous other changes made to the Schedule H mitigate against the need to delay implementation beyond one year.

Similarly, only Part I of the Schedule K will be required for 2008 tax years. Part I is a list of outstanding tax-exempt bond issues and requires summary information regarding such issues. Because many organizations will need additional time to prepare to complete other parts of Schedule K for the first time, Parts II through IV will be optional for 2008. The entire Schedule K must be completed beginning with 2009 tax years. Bonds issued before 2003 need not be reported in 2008 or later years.