

Understanding the Significant Changes to Forms 990 and 5500

Presented by:
Michelle McCann, CPA
Partner

LINDQUIST LLP

CERTIFIED PUBLIC ACCOUNTANTS

Today's Topics

- Form 990 Changes
(focus on Governance, Management
and Disclosure)
- Form 5500 Changes

Form 990 changes

- Background of Form 990 changes.
- Why is the new Governance, Management and Disclosure section such a big deal?
- New questions.
- What should organization management do and when?
- Are sample policies available?
- What is Lindquist LLP doing now?
- Questions.

Background of Form 990 changes

- Form 990 was completely redesigned by the IRS.
- New section added: Governance, Management and Disclosure
 - All tax-exempt organizations need to complete, including:
 - Health and welfare trusts
 - Apprenticeship trusts
 - Unions
 - Associations
- Changes are effective for years ending December 31, 2008.

Why is the new section such a big deal?

- Although not required by IRC, Form 990 now includes yes/no questions which imply policies and procedures are expected for:
 - Review of Form 990 prior to filing with the IRS.
 - Written conflict of interest policy.
 - Written whistleblower policy.
 - Written document retention and destruction policy.

Why is the new section such a big deal?

- Procedures for determining compensation for CEO, Executive Director, top management official, officers, and other key employees.
- How organization makes its tax exemption application, Form 990, Form 990-T available for public inspection.
- If and how the organization makes its governing documents, conflict of interest policy and financial statements available to the public.

Why is the new section such a big deal?

- Answering “no” to any of these questions may draw negative attention to your organization from the IRS and those that provide funding to your organization.

New questions

- For organizations with fiscal years of December 31, written policies need to be adopted no later than December 31, 2008.

New questions

- ***Was a copy of the Form 990 provided to the organization's governing body before it was filed?***
 - To answer "yes" means that a copy of the organization's Form 990 was provided to each voting member of the governing body of the organization prior to its filing with the IRS.
 - If answered "yes," an explanation must be included to identify who conducted the review, when it was conducted and the extent of such review.
 - If no review was or will be conducted, the organization must state, *"No review was or will be conducted."*

New questions

- ***Does the organization have a written conflict of interest policy?***
 - If yes: Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?
 - Does the organization regularly and consistently monitor and enforce compliance with the policy? If “yes,” explanation is required for describing how this is done.

New questions

– As defined by the IRS in the Instructions for Form 1023:

“A conflict of interest arises when a person in a position of authority over an organization, such as a director, officer, or manager, may benefit personally from a decision he or she could make. A conflict of interest policy consists of a set of procedures to follow to avoid the possibility that those in positions of authority over an organization may receive an inappropriate benefit.”

New questions

- ***Does the organization have a written whistleblower policy?***
 - A whistleblower policy establishes procedures for handling the submission of concerns regarding illegal practices or violations of adopted policies of the organization, specifies that the organization will protect the individual from retaliation and identifies those staff or board members or outside parties to whom such information can be reported.

New questions

- ***Does the organization have a written document retention and destruction policy?***
 - When preparing the document retention and destruction policy, an organization needs to make sure that the policy complies with federal and state laws. In addition to having a written policy, the organization should have procedures in place to identify the record retention responsibilities of staff, volunteers, board members and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records.

New questions

- ***Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision:***
 - ***The organization's CEO, Executive Director or top management official?***
 - ***Other officers or key employees of the organization?***

New questions

- To answer "yes" means that the process for determining compensation of the CEO, Executive Director or top management official included:
 1. Review and approval by a governing body or compensation committee, provided that persons with a conflict of interest were not involved;
 2. Use of data for comparable compensation for functionally comparable positions at similarly situated organizations; and
 3. Documentation maintained of the deliberations and decisions regarding the compensation arrangement.
- In addition, the organization must describe the process: for which offices or positions, and when the process was last used.

New questions

- ***IRC Section 6104 requires an organization to make its Form 1023 (or 1024), Form 990 and Form 990-T [501(c)(3)s only] available for public inspection. How does your organization make these available—own website, another's website, or upon request?***

Forms 1023/1024: organizations that applied and received tax exemption prior to July 15, 1987 are not required to make Form 1023/1024 publicly available.

Form 990 must be made publicly available for a period of three years from the date it was required to be filed (including extensions).

New questions

- ***Describe whether (and if so, how), the organization makes its governing documents, conflict of interest policy and financial statements available to the public.***
 - If an organization makes its governing documents, conflict of interest policy and financial statements available to the public, the organization must provide an explanation and indicate how such documents are made available to the public (i.e. organization's website, another website, upon request, etc.)
 - If an organization does not make any of these documents available to the public, the organization must provide such statement.

What should you do and when?

- Although most of these policies are not required, organizations should take inventory of the IRS suggested policies and procedures ASAP.
- Management of organizations should take a proactive approach and develop procedures and adopt policies sooner rather than later.
- The following written policies need to be adopted ***no later than December 31, 2008***:
 - Conflict of interest
 - Whistleblower
 - Document retention and destruction

What should you do and when?

- The following policies or procedures need to be adopted prior to filing the 2008 Form 990 (May 15, 2009 for calendar year organizations):
 - Review of Form 990 prior to filing with the IRS.
 - Procedures for determining compensation for CEO, Executive Director, top management official, officers, other key employees.
 - How the organization makes its tax exemption application, 990, 990-T available for public inspection.
 - If and how the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.

Are sample policies available?

- Refer to handouts for sample policies:
 - Conflict of interest
 - Whistleblower
 - Document retention and destruction

Please note that policies can vary widely, from simple to very complex, depending on the structure, operations and culture of the organization. Your organization can use these policies as a starting point to discuss and develop its own policies. Sample policies are provided with the understanding that Lindquist LLP is not rendering accounting, legal or other professional advice or opinions on specific facts or matters, as each individual circumstance is unique. We urge you to seek the advice of legal counsel to address your specific concerns.

What is Lindquist LLP doing now?

- Providing educational seminars for clients.
- Training our auditors through a series of classes.
- Updating our confirmation requests to unions, administrators and others for the new questions on the 2008 Form 990. The confirmation requests will go beyond the yes/no questions and request actual documentation of policies and procedures.

Questions on Form 990?

Form 5500 Changes

- Background of Form 5500 changes.
- Significant changes to the 2008 Form 5500.
- Significant changes to the 2009 Form 5500.
- How will the changes impact administrators, auditors and others?
- What is Lindquist LLP doing now?
- Questions.

Background of Form 5500 changes

- The DOL, PBGC and IRS concurrently adopted significant changes to Form 5500.
- Some changes are effective for years ending December 31, 2008.
- Additional changes are effective for years ending December 31, 2009.
- Changes to Form 5500 are intended to reflect PPA mandates, migrate to a wholly electronic system, and reduce and streamline annual reporting burdens for small businesses.

Significant changes to 2008 Form 5500

- Notable changes for 2008 affect DB plans as a result of PPA of 2006.
- New requirement for multiemployer plans to report number of employers with obligation to contribute to the plan.
- New actuarial schedule (Schedule MB for multiemployer plans or Schedule SB for single employer plans) must be filed. The new actuarial schedule replaces the old Schedule B.
 - Schedules MB and SB will be posted within 90 days of receipt by EFAST (DOL's receipt and processing system) to a new website (being developed).

Significant Changes to 2008 Form 5500

- Increased Retirement Plan Information (Schedule R)
 - For multiemployer plans, information on significant contributing employers (5% or more of total annual contributions):
 - Employer name.
 - EIN.
 - Amount of contributions made.
 - Contribution rate.
 - Contribution base unit measure (i.e. hourly, weekly, unit of product or other).

Significant Changes to 2008 Form 5500

- CBA expiration date.
 - Information on participants with no contributions made for the current year and two preceding years.
 - Number of employers who withdrew from the plan during the preceding year and the amount of withdrawal liability assessed or estimates to be assessed.
- For single-employer and multiemployer plans with over 1,000 participants:
- New investment allocation and duration questions.

Significant changes to 2009 Form 5500

- **Mandatory electronic filing requirement.**
 - EFAST2 filing system being developed.
 - As required by the PPA of 2006, 5500s for 2009 and later plan years will be automatically posted to a public disclosure website.
 - More details to be released in coming months. DOL outreach programs are targeted for spring 2009.

Significant changes to 2009 Form 5500

- Schedule A (Insurance Information) added section to Form for disclosure of insurance providers that fail to provide information (name of carrier and explanation of information not provided).

Significant changes to 2009 Form 5500

- Schedule C (Service Provider Information) expanded disclosures of providers receiving indirect compensation of more than \$5,000.
 - The expanded disclosures are intended to provide information needed by the plan sponsor to perform an annual review of plan fees and expenses in connection with monitoring service provider arrangements with the plan to ensure that fees are reasonable.
 - It will no longer appear that services are being provided to the plan at no cost.

Significant changes to 2009 Form 5500

- New format designed to expand reporting of indirect compensation.
 - Indirect compensation is compensation received from sources other than directly from the plan or plan sponsor, including payments to persons or entities for investment management, recordkeeping, participant communication and other services to the plan as part of a transaction with the plan.

Significant changes to 2009 Form 5500

- Reportable indirect compensation includes any fees and expense reimbursement payments charged to “investment funds” and reflected in the plan’s investment or return on investment. Examples of “investment funds” include:
 - Mutual funds
 - Bank commingled trusts
 - Insurance company pooled separate accounts
 - Other separately managed accounts and pooled investment funds

Significant changes to 2009 Form 5500

- Examples of fees and expenses include:
 - Management fees paid by a mutual fund to its advisor
 - Sub-transfer agency fees
 - Shareholder servicing fees
 - Account maintenance fees
 - 12b-1 distribution fees
 - Float revenue
 - Finder's fees
 - Brokerage commissions
 - Research or other product services
 - Other transaction based fees

Significant changes to 2009 Form 5500

- Indirect compensation ***excludes***:
 - Fees not specifically related to services rendered to a plan, including ordinary operating expenses charged against investment funds such as attorneys' fees, accountants' fees, printers' fees, etc.

Significant changes to 2009 Form 5500

- Introduction of “eligible indirect compensation” classification which requires less disclosure on Schedule C **only** if the following two conditions are met:
 1. Must consist of charges to plan’s assets that are reflected in the value of investments. (i.e. finders’ fees soft dollar revenue, float revenue, brokerage commissions or other transaction based fees specific to the plan), and
 2. The plan administrator must receive written materials that disclose the:
 - » Existence of the indirect compensation;
 - » Services provided or purpose of payment(s);
 - » Amount (or an estimate) of the compensation, or a description of compensation formula used to calculate or determine the compensation; and
 - » Identity of the party or parties paying and receiving the compensation.

Significant changes to 2009 Form 5500

- With respect to eligible indirect compensation, if the plan receives adequate disclosure, it does not have to report the amount of fees; disclosure is limited to name and EIN or address of the provider.

Disclosures for Schedule C

Indirect Compensation

Eligible

Not Eligible

1. Did the person receive only eligible indirect compensation for which the plan received the required disclosures?

YES

NO

2. Report name and EIN or address of each person.


Disclose

Disclose

3. If 1. above is answered "No," disclose the following:

a. Service Code(s)

Skip



b. Relationship to employer, employee organization, or person known to be a party-in-interest

Required

Required

\$ Amount

YES

YES/NO

\$ Amount

YES/NO

If 3g. Is YES, Need Disclosure

c. Report the amount of direct compensation

d. Check "Yes" or "No"--Did service provider receive indirect compensation?

e. Check "Yes" or "No"--Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?

f. Report the amount of indirect compensation (exclude eligible indirect compensation).

g. Check "Yes" or "No"--Did the service provider give you a formula instead of an amount or estimated amount?

h. If 3g. Is "Yes," provide formula.

Significant Changes to 2009 Form 5500

- Disclosure of indirect compensation does not need to be provided annually. However, plan administrators must review or update annually to ensure information remains accurate.
- The goal for many investment institutions and service providers will be to provide the written materials to ensure that the eligible indirect compensation classification is met whenever possible.
- Eligible indirect compensation classification excludes payments by a mutual fund to a recordkeeper for discrimination testing, QDRO administration and preparation of Form 5500.

Significant Changes to 2009 Form 5500

- Burden placed on administrators (not the recipient of indirect compensation) for determining that all appropriate disclosures have been made.
- The 2009 Schedule C has generated volumes of questions. In response, the DOL has posted 40 FAQs on the EBSA website.
- Similar to Schedule A, service providers that fail to provide Schedule C information will be disclosed (name of carrier and explanation of information not provided).

Significant Changes to 2009 Form 5500

- **Schedule SSA (Separated Vested Participant Information)**
 - Removed from Form 5500 but reporting responsibility not gone.
 - Will be replaced by Form SSA to be processed directly by the IRS.
 - Due date expected to be the same as Form 5500.
 - IRS to post draft forms and proposed regulations soon.
 - Electronic filing option unknown at this time.

How will changes impact administrators, auditors and others?

- Changes to 2008 Form 5500 present some significant changes for multiemployer defined benefit pension plans.
 - Administrators for multiemployer pension plans should review their systems and documents on file for collecting information on significant contributing employers for completing the new Schedule R questions.

How will changes impact administrators, auditors and others?

- 2009 is just around the corner—and changes to Schedule C are major.
 - Administrators and professionals (investment managers/advisors, auditors and attorneys) should work together to identify indirect compensation paid to persons or entities. Once identified, written disclosures for eligible indirect compensation should be requested and maintained on file to minimize reporting burden on Schedule C.
 - Auditors need to prepare their systems and establish procedures for handling the mandatory electronic filing requirement.
 - All should attend DOL outreach programs when they become available.

What is Lindquist LLP doing now?

- Providing educational seminars for clients.
- Training our auditors through a series of classes.
- Revising confirmation requests to reflect changes to 2008 and 2009 Forms.

Questions?

Thank you

Please contact Lindquist LLP with any questions.

Michelle McCann, CPA
Partner

(925) 498-1559

mmcann@lindquistcpa.com