



Filing Form 990 just got tougher for Not-for-Profits

During 2009, we will begin the process of preparing the redesigned Form 990 for your organization. On the new Form, there are some questions about the organization's board and key employees that require you to obtain information regarding the business and family relationships among these individuals.

Additionally, you will need to disclose the number of board members that are independent. You will not be able to accurately answer this question without being sure of the direct and indirect relationships between the board member and your organization. The IRS requires that you make a reasonable effort to obtain this information from your board members/key employees by requiring the completion of a questionnaire.

Enclosed is a questionnaire that we have developed to assist you with this new requirement. If you would like to have an electronic version of this, please go to our website at www.cshco.com for a Word version of the document.

We recommend that you send this document to anyone that was a board member for any portion of 2008 and to anyone that was a key employee during any portion of 2008. A key employee is defined as any employee meeting all three tests below:

- Reportable (W-2) compensation exceeding \$150,000 for the calendar year ending within your year if your organization has a fiscal year end.
- Has responsibilities and powers similar to officers, directors and trustees; or he or she manages a discrete segment of the organization that represents 10% or more of the organization's activities, assets, income or expense; or he or she has or shares authority to control or determine more than 10% of the organization's capital expenditures, operating budget or compensation for employees, and
- Is one of the top twenty employees that meet the previous two tests.

Please make sure that all questionnaires are signed and returned to the organization.

In addition to the enclosed questionnaire, we also recommend that you send a copy of your conflict of interest policy to all board members and key employees and request that they disclose any potential conflicts. If they believe they have no conflicts, please request a short note stating that the board member/employee is not aware of any potential conflicts. Please make sure that you get a response from all board members and key employees.

You should keep the originals in your files as proof that you made a reasonable attempt to obtain the information requested in the new 990. We will need a summary of all business and family members disclosed.

In addition to the questionnaire, we are also enclosing the list of policies and procedures that you may want to consider adopting by year end. These are asked about in the new 990. Although, these policies and procedures are not required by law, the IRS believes they represent good governance practices.

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Non-Profit list of Policies Suggested by New Form 990

- It is recommended that board meetings be documented in writing within the later of 60 days or the next board meeting.
- Each committee of the board that has the authority to act on behalf of the board should also maintain written minutes within the same time frame as number 1.
- If your organization has local chapters or affiliates, it is recommended that written policies and procedures be maintained that govern the activities of the chapters and affiliates to ensure that they operate in a manner that is consistent with your organization.
- A process should be adopted regarding the review of the Form 990 before it is filed with the Internal Revenue Service. It is not necessary that the entire board meet to review the Form 990, but it is recommended that a committee of the board, such as the Finance or Audit Committee meet to approve the Form 990 before it is filed.
- If you do not already have one, a conflict of interest policy should be adopted. Your policy should require that officers, directors, trustees and key employees annually disclose to the board any relationships or investment holdings that could be seen as a conflict.
- In addition to maintaining a conflict of interest policy, your organization should adopt procedures for monitoring and enforcing the policy.
- We recommend that a whistle blower policy be adopted.
- The establishment of a written document retention and destruction policy is recommended.
- For the offices of executive director or its equivalent within your organization and for any key employees or officers that receive compensation, their compensation should be determined by independent persons, comparability data should be obtained for persons in similar positions, and the process should be timely documented.
- If your organization participates in joint ventures with taxable entities, there should be a written policy which requires that this relationship be regularly evaluated to determine that it is in compliance with federal law. Additionally, the policy should list the procedures that are in place to safeguard the organization's exempt status.
- We recommend the establishment of an audit or finance committee made up of members of the Board of Directors that will oversee the financial statement audit or review. This committee should also be responsible for the hiring of an independent CPA firm.
- If your organization is a 501(c)(3) that holds fundraising events, accounts should be maintained in your general ledger to allow a separate accounting of gross receipts and expenditures for each separate event for which you receive more than \$5,000.
- If your organization provides grants or assistance to other organizations, governments or individuals in excess of \$5,000, you should maintain records regarding the eligibility requirements for recipients, the selection criteria used to award grants and substantiation of the amounts granted. You should also create procedures to be used to monitor the use of grant monies by recipients.

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Draft Letter:

Dear Board Member:

The Internal Revenue Service has made significant modifications to the Form 990, the tax form filed by tax exempt entities. This new form will be required for all tax years beginning in 2008.

One of the goals of the new form is to increase transparency of the exempt entity's operations and financial relationships. As such, there are questions on the new form regarding business and family relationships among board members, key employees and between board members and the organization.

It is a requirement of the organization to make a reasonable attempt to obtain this information from board members and key employees. Please answer the questions below and return the completed form to me by_____.

If you have any questions, please call me.

Sincerely,

Federal Form 990 Board Member Questionnaire

- 1) Do you have a business or family relationship with any other officer, director, trustee or key employee of the organization? See definitions below to help you correctly answer this question. Also, a complete listing of the board is enclosed for your reference.

- Yes
 No

If yes, please indicate the names of the individuals with whom you have a relationship and indicate the words family or business next to the name. No further information is required.

Name	Relationship
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Business relationship is defined as:

- One person being employed by the other in a sole proprietorship, or by an organization in which the other person is a trustee, director, officer, key employee or greater than 35% owner.
- One person transacting business with the other (other than in the ordinary course of either party's business on the same terms as are generally offered to the public), directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organization's tax year (indirect transactions are the transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater than 35% owner); or
- The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity.

Family relationships that need to be disclosed are: Spouse, children, sister, brother, parent, grandparent or any spouse of the foregoing.

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- 2) Have you or any of your family members had any business transactions with the organization, either directly or indirectly through an organization with which you or a family member is a board member, trustee, director or owner?

- Yes
 No

If so, please describe the transaction and the percent ownership if it is with a company you or your family member owns.

- 3) Are any of your family members employed by the organization?

- Yes
 No

If so, please name the employed family member.

This article was authored by Jane E. Pfeifer, CPA (jpfeifer@cshco.com). The article is intended to provide the reader with general knowledge related to Federal Form 990 and not specific advice. Please contact your CSH tax service provider to discuss how the changes referenced in this article may impact your organization.

Cincinnati
513.241.3111

Columbus
614.885.2208

Dayton
937.226.0070

Middletown
513.424.5000

Springfield
937.399.2000