

## Specific Instructions, continued

### Part VI Governance, Management, and Disclosure

All organizations must answer each question in Part VI. Even though certain governance, management, and disclosure policies and procedures may not be required under the Internal Revenue Code, the IRS considers such policies and procedures to generally improve tax compliance. For example, although the governing body is not required by federal tax law to review the Form 990, line 10 asks certain questions about the organization's process, if any, it uses to review the Form 990. See the *Glossary* for definitions of certain terms.

#### Section A. Governing Body and Management

**Line 1a. Number of voting members of governing body.** The governing body is the group of persons authorized under state law to make governance decisions on behalf of the organization and its shareholders or members, if applicable. The governing body is, generally speaking, the board of directors (sometimes referred to as board of trustees) of a corporation or association, or the board of trustees of a trust (sometimes referred to simply as the trustees, or trustee, if only one trustee). State the number, as of the end of the organization's tax year, of members of the organization's governing body with power to vote on all matters that may come before the governing body (other than when a conflict of interest disqualifies the member from voting). If the members of the governing body do not all have the same voting rights, explain material differences in Schedule O.

**Line 1b. Independent voting members.** State the number of independent voting members of the organization's governing body as of the end of the organization's tax year. A member of the governing body is considered "independent" only if all four of the following circumstances applied at all times during the organization's tax year:

1. The member was not compensated as an officer or other employee of the organization or of a related organization (see Schedule R instructions) except for the religious exception discussed below.
2. The member did not receive total compensation or other payments exceeding \$10,000 for the year from the organization or from related organizations as an independent contractor, other than reimbursement of expenses or reasonable compensation for services provided in the capacity as a member of the governing body. For example, a person who receives reasonable expense reimbursements and reasonable compensation as a director of the organization does not cease to be independent merely because he or she also receives payments of \$7,500 from the organization for other arrangements.
3. The member did not otherwise receive, directly or indirectly, material financial benefits from the organization or from a related organization. Transactions reportable in Schedule L with respect to a member of the governing body, or which would be reportable but for the large board exception (see Schedule L instructions), are deemed material financial benefits to the member for this purpose, except for a loan to the organization on arm's length or more favorable terms for the organization. In any case, a transaction with an amount greater than \$50,000 is a per se material financial benefit for this purpose.

4. The member did not have a family member that received compensation or other material financial benefits from the organization or from a related organization.

A member of the governing body is not considered to lack independence merely because of the following circumstances:

1. the member is a major donor to the organization;
2. the member receives officer or employee compensation as an agent of a religious order or a 501(d) religious or apostolic organization who has taken a bona fide vow of poverty, under circumstances in which the individual does not receive taxable income (see, e.g., Rev. Ruls. 77-290, 80-332); or
3. the member receives financial benefits from the organization solely in the capacity of being a member of the charitable or other class served by the organization in the exercise of its exempt function, such as being a member of a section 501(c)(6) organization, so long as the financial benefits comply with the organization's terms of membership.

**Example.** A is a voting member of the organization's governing body. A is also a member of the organization, which is a section 501(c)(6) trade association whose exempt purpose is to promote the trade and business of its members. As a member of the organization, A is entitled to receive material financial benefits generally available to all of the organization's members under the terms and conditions of membership. Neither A nor a family member of A received compensation or other material financial benefits that violate factors 1, 2 or 4 above. Any material financial benefits that A receives from the organization solely in A's capacity as a member of the trade association are disregarded for purposes of factor 3 and when determining whether A is an independent voting member of the organization's governing body.

**Line 2. Relationships among officers, etc.** Answer "Yes" if any of the listed persons had a family or business relationship with another listed person at any time during the organization's tax year. For each family and business relationship, identify the persons and describe their relationship in Schedule O. It is sufficient to state "family relationship" or "business relationship" without greater detail.

**Family relationship.** The family of an individual includes only his or her spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, and spouses of brothers, sisters, children, and grandchildren.

**Business relationship.** Business relationships between two persons include the following:

- 1) One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, key employee, or greater-than-35% owner;
- 2) One person is transacting business with the other, 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 \$5,000 in the aggregate during the tax year. Indirect transactions are transactions with an

- organization with which the one person is associated as a trustee, director, officer, key employee, or greater-than-35% owner; and
- 3) The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity.

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

**Line 3. Delegation of management to management company.** Answer "Yes" if the organization used a management company or other person to perform management duties customarily performed by or under the direct supervision of officers, directors, trustees, or key employees. Such management duties include, but are not limited to, hiring, firing, and supervising personnel, planning or executing budgets or financial operations, or supervising exempt operations or unrelated trades or businesses of the organization. For this purpose, do not include an investment management company unless the organization conducts investment management services for others.

**Line 4. Changes to organizational documents.** The organization must report significant changes to its organizing or enabling document by which it was created (articles of incorporation, association, or organization; trust instrument; constitution; or similar document), and to its rules governing its affairs commonly known as bylaws (or regulations, operating agreement, or similar document). Report changes made since the prior Form 990 was filed, or that were not reported on any prior Form 990. Do not report changes to policies described or established outside of the organizing or enabling document and bylaws (or similar documents), such as adoption of, or change to, a policy adopted by resolution of the governing body that does not entail a change to the organizing document or bylaws.

Examples of significant changes to the organizing or enabling document or bylaws include changes to such documents:

- in the number, composition, qualifications, authority, or duties of the governing body's voting members;
- in the number, composition, qualifications, authority, or duties of the organization's officers or key employees;
- in the role of the stockholders or membership in governance;
- in the distribution of assets upon dissolution;
- in the provisions to amend the organizing or enabling document or bylaws;
- in the quorum, voting rights, or voting approval requirements of the governing body members or the organization's stockholders or membership;
- in the organization's exempt purposes or mission;
- in the policies or procedures regarding compensation of officers, directors, trustees, or key employees, conflicts of interest, whistleblowers, or document retention and destruction; and
- in the composition or procedures of an audit committee.

Examples of insignificant changes made to organizing or enabling documents or bylaws that are not required to be reported here include changes to the organization's registered agent with the State and to the required or permitted number or frequency of governing body or member meetings.

Describe significant changes in Schedule O, but do not attach a copy to Form 990 of the amendments or amended document (or recite the entire amended document verbatim), unless such amended documents reflect a change in the organization's name.

**TIP:** If an exempt organization changes its legal structure, such as from a trust to a corporation, then a new exemption application is required to establish that the new legal entity qualifies for exemption.

**Line 5. Material diversion of assets.** Answer "Yes" if the organization became aware during the year of a material diversion of its assets, whether or not the diversion occurred during the year. If "Yes," explain the nature of the diversion, amounts or property involved, corrective actions taken to address the matter, and pertinent circumstances in Schedule O, though the person or persons who diverted the assets should not be identified by name.

A diversion of assets includes any unauthorized conversion or use of the organization's assets other than for the organization's authorized purposes, including but not limited to an embezzlement or theft. Report diversions by the organization's officers, directors, trustees, employees, volunteers, independent contractors, grantees (diverting grant funds), or any other person, even if not associated with the organization other than by the diversion. A diversion of assets does not include an authorized transfer of assets for fair market value consideration, such as to a joint venture or for-profit subsidiary in exchange for an interest in the joint venture or subsidiary. For this purpose, a diversion is considered material if it exceeds the lesser of \$250,000 or 5 percent of the organization's gross receipts for its tax year or total assets as of the end of its tax year.

**Note:** A diversion of assets may in some cases constitute inurement of the organization's net earnings. In the case of 501(c)(3) and (4) organizations, it also may be an excess benefit transaction taxable under section 4958 and reportable in Schedule L.

**Line 6. Members or stockholders.** Answer "Yes" if the organization is organized as a stock corporation, a joint-stock company, a partnership, a joint venture, or a limited liability company. Also state "Yes" if the organization is organized as a non-stock, non-profit, or not-for-profit corporation or association with members if (1) the right to participate in and benefit from the organization's activities is limited primarily to members (as with a cooperative or mutual benefit corporation), (2) the members elect the members of the governing body (but not if the persons on the governing body are the organization's only members), (3) the members approve decisions of the governing body, or (4) the members may receive a share of the organization's profits, excess dues, or net assets upon the organization's dissolution. Answer "No" if the organization is a trust for federal tax purposes. Describe in Schedule O the classes of members or stockholders.

**Line 7a. Election of members of governing body.** Answer “Yes” to Line 7a if there are one or more persons (other than the organization’s governing body itself, acting in such capacity) that have the right to elect or appoint one or more members of the organization’s governing body, whether periodically, as vacancies arise, or otherwise. If “Yes,” describe in Schedule O the class or classes of such persons and the nature of their rights.

**Line 7b. Approval of decisions of governing body.** Answer “Yes” to Line 7b if there are one or more persons (whether members, stockholders, or otherwise) who have the right to approve or ratify decisions of the governing body, such as approval of the governing body’s election or removal of members of the governing body, or approval of the governing body’s decision to dissolve the organization. If “Yes,” describe in Schedule O the class or classes of such persons, the decisions that require their approval, and the nature of their voting rights.

**Line 8. Documentation of meetings and actions.** Answer “Yes” to lines 8a and 8b if the organization contemporaneously documented by any means permitted by state law every meeting held and written action taken during the organization’s tax year by its governing body and committees with authority to act on behalf of the governing body (which ordinarily do not include advisory boards). Documentation may include approved minutes, strings of e-mails, or similar writings that explain the action taken, when it was taken, and who made the decision. For this purpose, contemporaneous means by the later of (1) the next meeting of the governing body or committee (e.g., approving the minutes of the prior meeting), or (2) 60 days after the date of the meeting or written action. If “No,” explain in Schedule O the organization’s practices or policies, if any, regarding documentation of meetings and written actions of its governing body and committees with authority to act on its behalf.

**Line 9a. Local chapters, branches, or affiliates.** Answer “Yes” if the organization had during its tax year any local chapters, branches, lodges, units, or similar affiliates. These terms include organizations over which the organization has the legal authority to exercise supervision and control, such as subordinate organizations in a group exemption, as well as local units that are not separate legal entities under state law over which the organization has such authority.

**Line 9b. Policies and Procedures Governing Chapters.** “Written policies and procedures governing the activities of chapters, branches, and affiliates to ensure their consistency with activities of the organization” are documents used by the organization and its local units to address the policies, practices, and activities of the local unit. Such policies and procedures may include required provisions in the chapter’s articles of organization or bylaws, a manual provided to chapters, a constitution, or similar documents. If “No,” explain in Schedule O how the organization ensures that the local unit’s activities are consistent with its own.

**Note:** The central or parent organization of a group exemption ruling is required to exercise oversight over its subordinate organizations as a condition of the group exemption.

**Line 10. Governing body review of Form 990.** State “Yes” only if a copy of the organization’s final Form 990 (including required schedules), as ultimately filed with the IRS, was provided to each voting member of the organization’s governing body, whether in paper or electronic form, prior to its filing with the IRS. Also describe in Schedule O the process, if any, by which any of the organization’s officers, directors, trustees, board committee members, or management reviewed the prepared Form 990, whether before or after it was filed with the IRS, including specifics regarding who conducted the review, when they conducted it, and the extent of any such review. If no review was conducted, state “No review was conducted.”

**Line 11. Addresses of officers, directors, etc.** The IRS needs a mailing address to contact the organization’s officers, directors, trustees, and key employees. The organization may use its official mailing address stated on the first page of Form 990 as the mailing address for such persons. Otherwise, state in Schedule O the mailing addresses for such persons that are to be contacted at a different address.

## **Section B. Policies**

**Line 12a. Conflict of interest policy.** A conflict of interest policy defines conflicts of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that may help identify conflicts of interest, and specifies procedures to be followed in managing conflicts of interest. A “conflict of interest” arises when a person in a position of authority over an organization, such as an officer, director, or manager, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. For this purpose, a conflict of interest does not include questions involving a person’s competing or respective duties to the organization and to another organization, such as by serving on the boards of both organizations, that do not involve a material financial interest of, or benefit to, such person.

**Example.** B is a member of the governing body of X Charity and of Y Charity, which are 501(c)(3) public charities with different charitable purposes. X Charity has taken a public stand in opposition to a specific legislative proposal. At an upcoming board meeting, Y Charity will consider whether to publicly endorse the same specific legislative proposal. While B may have a conflict of interest in this decision, the conflict does not involve a material financial interest of B’s merely as a result of Y Charity’s position on the legislation.

**Line 12b. Annual disclosure of interests.** Answer “Yes” if the organization’s officers, directors, trustees, and key employees are required to disclose or update annually (or more frequently) their interests that could give rise to conflicts of interest, such as a list of family members, substantial business or investment holdings, and other transactions or affiliations with businesses and other organizations.

**Line 12c. Enforcement of conflicts policy.** If “Yes,” describe in Schedule O the organization’s practices for monitoring proposed or ongoing transactions for conflicts of interest and dealing with potential or actual conflicts, whether discovered before or after the transaction has occurred. The description should include an explanation of which

persons are covered under the policy, the level at which determinations of whether a conflict exists are made, and the level at which actual conflicts are reviewed. Also explain any restrictions imposed on persons with a conflict, such as prohibiting them from participating in the governing body's deliberations and decision in the transaction.

**Lines 13 and 14. Whistleblower and document retention policies.** A whistleblower policy encourages staff and volunteers to come forward with credible information on 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. A document retention and destruction policy identifies 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. Answer "Yes" if the organization implemented these policies on or before the last day of the organization's tax year.

**TIP:** The Sarbanes-Oxley legislation imposes criminal liability on tax-exempt and other organizations for retaliation against whistleblowers, and for destruction of records with the intent to obstruct a federal investigation. See 18 U.S.C. sections 1513(e) and 1519. Also note that organizations are required to keep books and records relevant to its tax exemption and its filings with the IRS

**Line 15. Process for determining compensation.** Answer "Yes" to line 15a if the organization used a process for determining compensation (reported in Part VII or Schedule J) of the CEO, Executive Director, or other person who is the top management official, that included all of the following elements:

- Review and approval by a governing body or compensation committee, provided that persons with a conflict of interest with respect to the compensation arrangement at issue were not involved. For purposes of this question, use the definition of "conflict of interest" set forth in Regulations section 53.4958-6(c)(1)(iii).
- Use of data as to comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations.
- Contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement.

Answer "Yes" to Line 15b if the process for determining compensation of one or more officers or key employees other than the top management official included all of the elements listed above.

If "Yes" to Lines 15a and/or 15b, describe the process in Schedule O, identify the offices or positions for which the process was used to establish compensation of the persons who served in those offices or positions, and state the year in which this process was undertaken.

**Line 16. Joint venture policy.** Answer "Yes" to Line 16a if at any time during its tax year the organization invested in, contributed assets to, or otherwise participated in a joint venture or similar arrangement with one or more taxable persons, regardless of

whether the venture or arrangement is taxed as a partnership or as an association taxable as a corporation for federal income tax purposes. Include all such arrangements whether the purpose is to conduct an exempt activity, an investment activity, or an unrelated trade or business activity, and regardless of whether the organization controls the joint venture or arrangement. Disregard ventures or arrangements that meet both of the following conditions:

1. 95% or more of the venture's or arrangement's income for its tax year ending with or within the organization's tax year is described in sections 512(b)(1)-(5) (including unrelated debt-financed income)
2. The primary purpose of the organization's contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.

Answer "Yes" to Line 16b if the organization has both (1) adopted a written policy or procedure that requires the organization to negotiate in its transactions and arrangements with other members of the partnership such terms and safeguards adequate to ensure that the organization's exempt status is protected, and (2) taken steps to safeguard the organization's exempt status with respect to the venture or arrangement.

Some examples of safeguards include: control over the venture or arrangement sufficient to ensure that the venture furthers the exempt purpose of the organization; requirements that the venture or arrangement give priority to exempt purposes over maximizing profits for the other participants; that it not engage in activities that would jeopardize the organization's exemption; and that all contracts entered into with the organization be on terms that are arm's length or more favorable to the organization.

### **Section C. Disclosure**

**Line 17. Form 990 filings in States.** Use Schedule O if additional space is necessary.

**TIP:** Some States require or permit the filing of Form 990 to fulfill State exempt organization or charitable solicitation reporting requirements.

**Line 18. Public availability of Forms 1023/1024, 990, and 990-T.** Exempt organizations must make publicly available their Form 1023 or 1024 application for recognition of exemption. Applications filed before July 15, 1987, need not be made publicly available unless the organization had a copy on July 15, 1987. Organizations that file Form 990 must make it publicly available for a period of three years from the date it is required to be filed (including extensions) or, if later, is actually filed. Names and addresses of contributors (as set forth in Form 990 Schedule B and in Form 1023/1024) must be withheld from public inspection. 501(c)(3) organizations that file Form 990-T also are required to make their Form 990-T publicly available for the corresponding three-year period, for forms filed after August 17, 2006 (unless the Form was filed solely to request a refund of telephone excise taxes). See Appendix for more information on public inspection availability. Explain in Schedule O if the organization does not make publicly available any form discussed above upon request.



**Line 19. Public availability of other documents.** Explain in Schedule O whether the organization makes its governing documents, conflict of interest policy, and financial statements (whether or not audited) available to the general public, and if so, how it makes them available to the public (e.g., posting on the organization's website, posting on another website, providing copies on request, inspection at an office of the organization).

Federal tax law does not require that such documents be made publicly available except as part of a form that is publicly available (such as Form 1023 or 1024).

**Line 20. Location of books and records.** The organization is not required to provide the address or telephone number of a personal residence of an individual. Provide the name of the person who possesses the books and records, and the business address and telephone number of such person (or of the organization if the books and records are kept by such person at a personal residence).

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