



## Draft Form 990: Questions Associations Should Ask

### Background

In June 2007, the IRS released a redesigned draft Form 990, the annual information return filed by all tax-exempt organizations. This is the first major redesign of the Form 990 since 1979. In an effort to enhance the form's utility as both a compliance and public disclosure tool, the new draft 990 consists of a 10-page core form to be completed by each filing organization, along with 15 separate schedules requiring specific information only from organizations engaged in particular activities, such as fundraising, political campaign and lobbying activities, non-cash charitable contributions, loans, tax-exempt bonds, etc.

Among the highlights of the new Form 990 are: a summary page providing the organization's identifying information and a snapshot of the group's key financial, compensation, governance and operational information; a glossary of terms that seeks to make the form and its instructions more reader-friendly; and a portion of the form requiring governance information, including composition of the board and financial statement practices.

The redesign of the form is said to have been based on three guiding principles:

- Enhancing transparency to provide the IRS and the public with a realistic picture of the organization, along with the basis for comparison to other organizations;
- Promoting compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of noncompliance; and
- Minimizing the burden on filing organizations.

Following a 90-day comment period, the IRS hopes to have a final form ready for use for the 2008 tax year (returns filed in 2009). The comment period lasts until Sept. 14, 2007.

ASAE, which will be filing formal comments on the new form this summer, suggests associations study the new form closely as this is our best opportunity to give the IRS feedback on the new draft form 990 before it is put into use, and there are some major changes to the form that some associations may find troubling or, at the very least, in need of clarification.

### Areas of Interest

The new form 990 – the core form, plus additional schedules – reflects recognition at the IRS that there are many different types of tax-exempt organizations and that the 990 shouldn't be a "one size fits all" type of document. The rewrite also reflects the IRS's interest in turning the form into a more reader-friendly, public disclosure document, as well as a tax reporting tool. Documented instances of abusive practices on the part of several charitable organizations, as well as enhanced public interest in executive compensation and increased Congressional focus on charities, have obviously influenced the IRS in its rewrite of Form 990.

While ASAE favors disclosure, the IRS has admittedly limited the comment period for the new form to 90 days to allow for installation of new technology that must be in place for the new form to be used for the 2008 tax year. With this in mind, the following are a few areas of the draft form that associations may want to review before deciding whether to submit comments to the IRS:

### **Compensation & Fundraising Ratios:**

On the first page of the core form, the IRS requests calculations of executive compensation amounts and fundraising contributions as a percentage of total revenues, perhaps over-inflating for the unsophisticated reader the importance of this information in assessing organizational performance.

### **Key Employees:**

In addition to the compensation of the chief staff executive, any current and former officers, directors or trustees, and key employees, the draft form asks for a listing of the organization's five highest compensated employees. While not new for section 501(c)(3) filers, this is a new requirement for section 501(c)(6) trade or professional association filers. Additionally, the IRS has expanded the definition of a "key employee" to encompass department heads, as well as the executive director/CEO, CEO, or COO. These two changes would result in disclosure of compensation for a significant number of association employees.

### **Governance:**

The IRS asks a number of questions on the new form about governance, which many would say is outside the agency's statutory authority to enforce the nation's tax laws. Organizations may want to consider whether they believe the IRS is overstepping its bounds by asking questions about governance on a tax return.

### **Activities Outside the U.S.:**

The draft Form 990 requires several statements regarding activities conducted outside the United States. Organizations that indicate they do engage in business or program service activities outside the U.S. - which presumably would include any association that holds volunteer board meetings or conferences internationally - would need to file an additional schedule and provide summary financial information regarding these activities, on a country-by-country basis. This additional disclosure presumably might open an association up to additional scrutiny from the IRS.

### **Political Activities:**

Much of the information requested by the IRS in its separate schedule for political and lobbying activities is duplicative with organizations' filings with the Federal Election Commission (FEC). Additionally, the IRS requires an estimate of volunteer hours on political campaign activities. Additional clarification may be required to limit an association's responsibility to report activities of its board members that are conducted on their own time, and not on the organization's behalf.

### **Give Us Your Feedback!**

Once you have reviewed the new draft form 990, ASAE would love to get your feedback! We are in the process of gathering input from our members to include in the drafting of our comments to the IRS on behalf of the association sector. Download the new form from the IRS website at <http://www.irs.gov/pub/irs-tege/form990coreform.pdf>.

Please send your concerns with the issues mentioned above, as well as any other thoughts you have on the new form, by Wednesday, August 22 to [Form990@asaenet.org](mailto:Form990@asaenet.org).

ASAE will post its formal comments on its website after they are filed with the IRS. Thanks!



John H. Graham IV, CAE  
President and CEO