

## Compensation Policy

The new Form 990 subjects the compensation of officers and key employees to considerable scrutiny. For the first time, all tax-exempt entities—not simply 501(c)(3) organizations—are required to publicly disclose the salaries of their five highest paid employees. Organizations must also account for a more complete picture of executive compensation, describing any retirement plan contributions, deferred compensation, or health and welfare benefits that may complement reportable wages.

Line 15a of Part VI requires your organization to detail the process by which it approves compensation for your Chief Executive Officer, Executive Director, and top management officials. Line 15b asks you describe the process used to approve compensation for any other officers or key employees.

Before your organization may answer “yes” with respect to setting compensation for any of these “Covered Individuals,” you must implement a compensation policy that includes three basic elements:

- The organization’s board of directors, or a committee tasked with setting compensation, must approve the compensation arrangement;
- The board of directors or its committee must have obtained and relied upon appropriate comparability or benchmarking data—such as industry surveys or compensation studies—prior to making its decision; and
- The board of directors or its committee must adequately document the basis for its decision at the time it is made.

A compensation policy that meets these requirements will satisfy the Form 990. In addition, a nonprofit organization that chooses to adhere to a policy with these three elements creates additional grounds to defend itself from any allegation of excessive compensation.

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## ABC NONPROFIT Compensation Policy

In compliance with Internal Revenue Service guidelines for approval of senior management compensation, the Board of Directors of ABC Organization (“ABC”) will follow the following review and approval guidelines.

Individuals Subject to this Policy (defined as “Covered Individuals”):

- **Chief Employed Executives:** The individual or individuals who have the ultimate responsibility for implementing the decisions of ABC’s governing body or for supervising the management, administration, or operations of ABC, including ABC’s top management official and top financial official. If this ultimate responsibility resides with two or more individuals who may exercise such responsibility in concert or individually, then each individual should be included.
- **Officers:** A person elected or appointed to manage ABC’s daily operations, such as a president, vice-president, secretary, or treasurer. The officers of an organization are determined by reference to its organizing document, bylaws, and include, at a minimum, those officers required by applicable state law.
- **Key Employees:** Individuals who are not a Chief Employed Executive or an officer of ABC, but who meet all of the following criteria:
  1. **\$150,000 Threshold.** The individual receives reportable compensation<sup>1</sup> from ABC and all related organizations<sup>2</sup> in excess of \$150,000 for the calendar year ending with or within ABC’s tax year;
  2. **Responsibility Criteria.** The individual:
    - a) has responsibilities, power or influence over ABC as a whole that is similar to those of officers, directors, or trustees;
    - b) manages a discrete segment or activity of ABC that represents 10% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
    - c) has or shares authority to control or determine 10% or more of ABC’s capital expenditures, operating budget, or compensation for employees.
  3. **Top 20 Limitation.** In addition to meeting the \$150,000 threshold and the Responsibility Criteria, the individual is one of the top 20 most highly compensated employees (including all income from ABC and related organizations) for the calendar year ending with or within ABC’s calendar year.

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<sup>1</sup> Compensation that is reported on Form W-2, Box 5, or in Box 1 if the employee’s compensation is not reported in Box 5, or Form 1099-MISC, Box 7, filed for the calendar year ending with or within the organization’s tax year

<sup>2</sup> An organization that stands in one or more of the following relationships to the filing organization: (1) Parent – an organization that controls the filing organization; (2) Subsidiary – an organization controlled by the filing organization; (3) Supporting/Supported – an organization that is (or claims to be) at any time during the organization’s tax year (i) a supporting organization of the filing organization within the meaning of Section 509(a)(3), if the filing organization is a supported organization within the meaning of Section 509(f)(3), or (ii) a supported organization, if the filing organization is a supporting organization.

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### Procedure for Approving Compensation

In reviewing and approving the compensation of any Covered Individuals, the ABC Organization Board of Directors, or a delegated committee of the Board (referred to as the "Approval Body" below), will utilize the following process:

1. Impartial Decision Makers. The compensation arrangement must be approved in advance (before any payment is made) by the Approval Body of ABC composed entirely of individuals who do not have a conflict of interest with respect to the compensation arrangement (example: neither the executive whose compensation is being determined nor any of his/her family members may be present during the discussion/debate or participate in the vote).
2. Comparability Data. When the Approval Body is considering compensation to Covered Individuals, it must rely on comparability data that demonstrate the fair market value of the compensation in question. For example, when crafting compensation packages, the Approval Body must secure data that documents compensation levels for similarly qualified individuals in like positions at like organizations. This data may include the following:
  - a) expert compensation studies by independent firms;
  - b) written job offers for positions at similar organizations;
  - c) documented telephone calls about similar positions at both nonprofit and for-profit organizations; and
  - d) information obtained from the IRS Form 990 filings of similar organizations.
3. Concurrent Documentation. The Approval Body must document how it reached its decisions, including the data on which it relied. To qualify as concurrent documentation, written or electronic records of the Approval Body (such as meeting minutes) must note:
  - a) the terms of the compensation and the date it was approved;
  - b) the members of the Approval Body who were present during the debate on the compensation that was approved and those who voted on it;
  - c) the comparability data obtained and relied upon and how the data were obtained; and
  - d) any actions taken with respect to consideration of the compensation by anyone who is otherwise a member of the Approval Body but who had a conflict of interest with respect to the decision on the compensation.

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