



# OACUBO Tax Update

**The Redesigned IRS Form 990. What We've Learned.  
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# Objectives of Presentation

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- n General Overview of the Core Form 990 and Supplemental Schedules
  
- n Focus on Key Parts of the Redesigned Form 990
  - Ø Part VI, Corporate Governance, Management and Disclosure
  - Ø Schedule L, Transactions with Interested Persons
  - Ø Part VII, Executive Compensation
  - Ø Schedule J, Compensation Information
  - Ø Parts VIII, IX, X XI and Schedule D- Financial Reporting
  - Ø Schedule K, Tax-Exempt Bonds
  - Ø Overview of the Remaining Redesigned Form 990 Schedules
  
- n Practical Guidance on Completing the Return Based on Experience

# Overview

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- n On June 14, 2007, IRS released a draft redesign of Form 990
- n First major revision to Form 990 since 1979
- n Organizations will begin using this form for the 2008 tax year (returns filed in 2009)
- n For most colleges and university, the Redesigned Form 990 will be applicable for the 6/30/09 FYE
- n Final redesigned Form 990 released for review on December 21, 2007
- n Final Instructions published on August 19, 2008

# IRS' Guiding Principles for Revision

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- n Enhancing Transparency
- n Promoting Compliance
- n Minimizing Burden of Reporting Organization

# Enhanced Transparency

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- n IRS is using its statutory authority to require extensive reporting and disclosure by tax exempts
  
- n SEC-like disclosure document
  - Ø Requests large amount of narrative and factual information about organizations' activities, operations and transactions with insiders.
  
  - Ø For example, there are now 104 narrative questions in Parts IV, V, and VI of the Redesigned Form 990, exploring every aspect of the organization's operations.

# Promoting Compliance

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- n Form more closely tracks the organization's operations and use of assets, enables the IRS to more efficiently assess the organization's noncompliance with its tax exempt status.
- n Form requests detailed information in areas perceived to have the highest potential for abuse.

# Minimizing Burden of Reporting Organization

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- n IRS contends that the redesigned structure and flow of the questions and the use of formatted schedules will reduce the filing burden on most organizations.
  
- n IRS acknowledges that for many large organizations there will be additional recordkeeping and preparation burden.
  - n More detail required on supporting schedules and narratives on governance issues
  - n Definition of “Key Employee” could expose employees’ reportable compensation to include more personnel
  - n Tracking of private use of tax-exempt bonds

# Redesigned Form 990

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## n Core Form 990

- Ø 11 Pages subdivided into eleven reporting sections

- Ø 16 Supplemental Schedules

- Ø IRS is moving away from unstructured client designed schedules to promote comparability of reporting. Allows IRS to obtain more detailed information about certain types of organizations (hospitals, schools) and activities without burdening all organizations.

# Core Form 990

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- n Part I – Summary Page
- n Part II – Signature Block
- n Part III - Statement of Program Service Accomplishments
- n Part IV-Checklist of Required Schedules
- n Part V- Statements Regarding Other IRS Filings and Tax Compliance
- n Part VI - Corporate Governance, Management and Disclosure
- n Part VII – Executive Compensation
- n Part VIII - Statement of Revenue
- n Part IX- Statement of Functional Expenses
- n Part X- Balance Sheet
- n Part XI- Financial Statements and Reporting

# Form 990 Schedules

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- n Schedule A- Public Support Test
- n Schedule B- Schedule of Contributors
- n Schedule C- Political Campaign and Lobbying Activities
- n Schedule D- Supplemental Financial Statements
- n Schedule E- Educational Institutions
- n Schedule F- Statement of Activities Outside the U.S
- n Schedule G- Fundraising Activities
- n Schedule H- Hospitals
- n Schedule I – Grants and Other Assistance
- n Schedule J – Compensation Information
- n Schedule K – Tax Exempt Bonds
- n Schedule L – Transactions With Interested Persons
- n Schedule M – Non-Cash Contributions
- n Schedule O – Supplemental Information to Form 990
- n Schedule R – Related Organizations

# Page I of Form 990 - Part I and II

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n Part I contains the following:

- Ø Brief description of Organization's mission
- Ø Number of voting Board members and independent Board members
- Ø Number of employees and volunteers
- Ø Gross unrelated business income revenue and net unrelated business income reported on Form 990-T
- Ø Consolidated revenues (contributions, program services, investment income and other income) for prior year and current year
- Ø Consolidated expenses for prior year and current year
- Ø Summary of Net Assets or Fund Balance
- Ø Eliminated preparer's SSN box in Part II, preparers must obtain PTIN

# Parts III and IV

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## n Part III- Statement of Program Accomplishments

- Ø Part III is similar to Part II of current Form 990 (2006 and 2007)
- Ø This section replaces Analysis of Income Producing Activities in current Form 990.
- Ø Expenses and revenues of the three largest expense producing activities must be reported.
- Ø Added questions related to significant changes (new activities or termination of an activity) not listed in prior returns
  - Ø Any changes are to be described on new Schedule O

## n Part IV- Checklist of Required Schedules

- Ø A total of 44 yes/ no trigger questions to determine which supplemental Form 990 schedules are to be completed by the organization.
- Ø Intended to provide IRS with an overview of the organization's activities and a checklist to prompt the organization on which schedules should be filed.

# Part IV

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## § Issues on Part IV

- Ø Question 12 “Did the organization receive an audited financial statement for the year for which it is completing this tax return that was prepared in accordance with GAAP?”
  - Instructions state if organization was part of a consolidated financial statement the answer is “NO”
  
- Ø Question 14- Employees Outside the United States
  - Definition of employee if visiting professor at college outside United States.

# Part V

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- n Part V- Statements Regarding Other IRS Filings and Tax Compliance
  - Ø Similar to Part VI of current Form 990
  - Ø New questions related to Donor Advised Funds and their distributions.
  - Ø New questions related to deductible contributions specifically:
    - o Filing Form 8282-Disposition of contributed property.
    - o Form 1098-C, Receipt of cars, boats, ...
    - o Form 8899 – Contributions of qualified intellectual property

## Part V (Cont.)

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- n There are many types of activities that tax exempt organizations may be involved in requiring the filing of additional IRS Forms, including the following:
  - Ø Form 1099 – Independent Contractors
  - Ø Form W-2G – Gambling/Gaming Reporting
  - Ø Form W-3 – Lists the total number of employees
  - Ø Form 990-T – Unrelated Business Tax Reporting
  - Ø TD F 90-22.1 – Foreign Bank Accounts
  - Ø Form 8886-T – Tax Shelter Reporting for Tax Exempt Investors

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# **Governance and Corporate Matters**

## Part VI, Form 990 Governance, Management & Disclosure

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- n IRS article regarding Governance and 501(c)(3) organizations, implying “best practices” at [http://www.irs.gov/pub/irs-tege/governance\\_practices.pdf](http://www.irs.gov/pub/irs-tege/governance_practices.pdf)
  - Ø IRS Examination Check sheet at [http://www.irs.gov/pub/irs-tege/governance\\_check\\_sheet.pdf](http://www.irs.gov/pub/irs-tege/governance_check_sheet.pdf)
  
- n IRS acknowledges that questions go beyond legal requirements
  - Ø Risk that third parties (e.g., media, donors, etc.) may misinterpret answers
  - Ø Burden on organization to explain
  
- § IRS prefers organizations to have policies related to:
  - Ø Executive Compensation
  - Ø Conflicts of Interest
  - Ø Investments
  - Ø Fundraising
  - Ø Document Retention
  - Ø Whistleblower

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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- n Number of voting members of governing body
- n Must also report number who are “independent” (defined)
  - Ø Important that independent directors comprise at least a majority of voting board members
  - Ø Narrow definition will pose significant challenges for many organizations seeking qualified directors
- **Question- Is the mechanism by which the organization can determine whether a Board member is independent been implemented?**

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

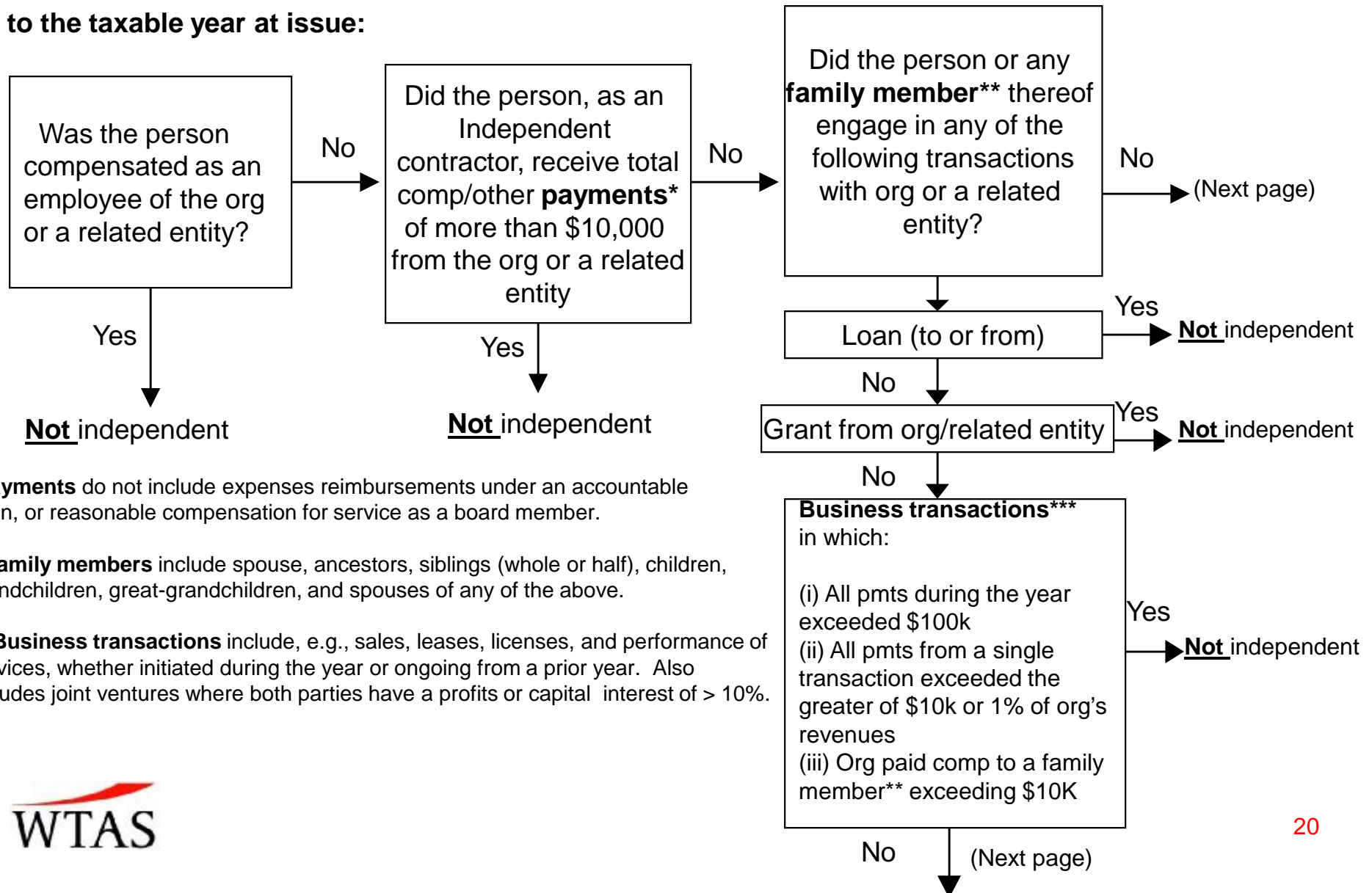
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### n Three conditions for independence:

- Ø Not compensated as an employee of organization or related entities
- Ø Did not receive compensation or other payments of more than \$10,000 from organization and related entities (other than reimbursed expenses or reasonable compensation for services as a director)
- Ø Did not (and family members did not) engage in any transaction with the organization or a related entity that is required to be reported on Schedule L
  - o Loans
  - o Grants
  - o “Business transactions”

# Determining “Independence” of Board Members IRS Revised Form 990

As to the taxable year at issue:



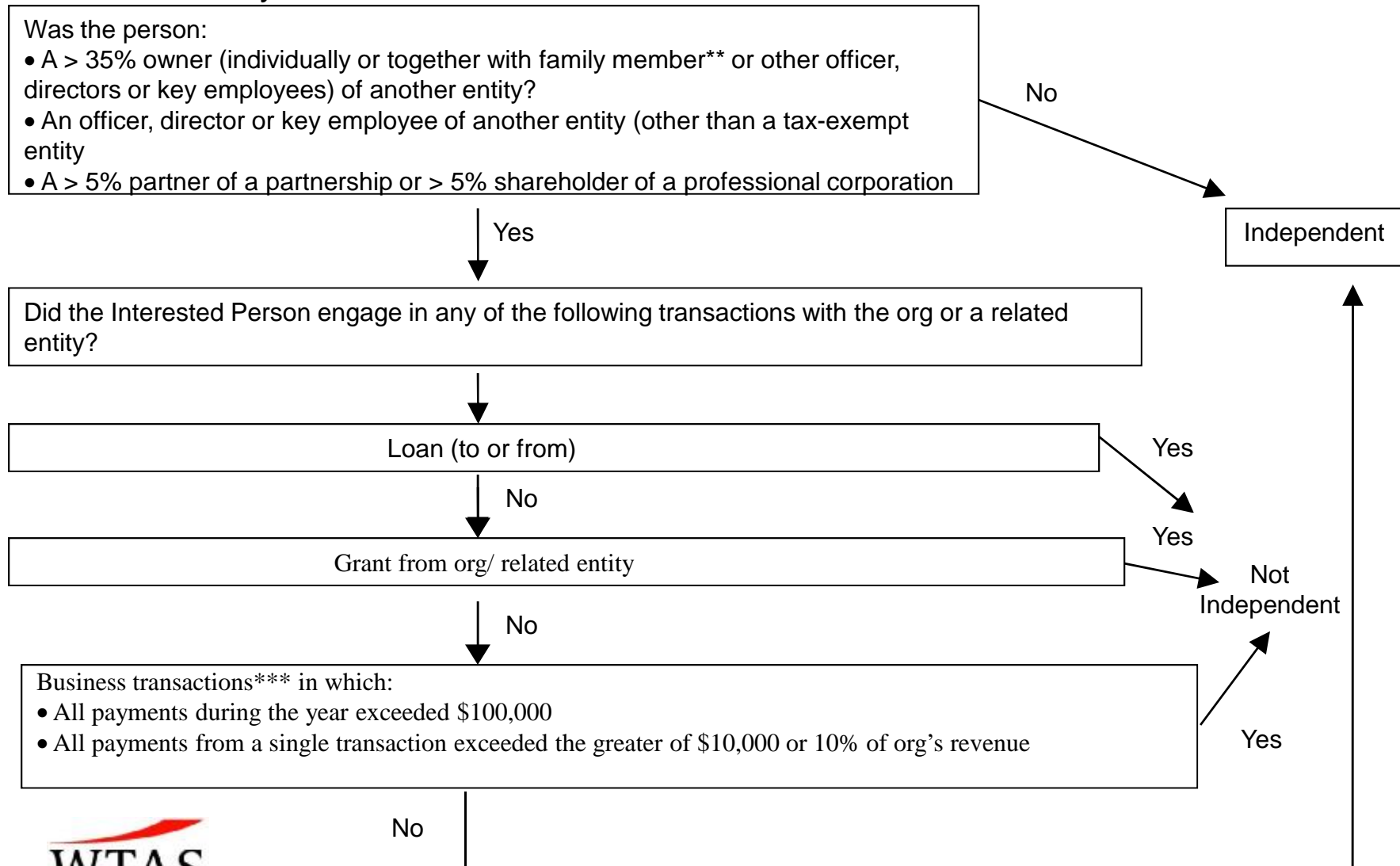
\***Payments** do not include expenses reimbursements under an accountable plan, or reasonable compensation for service as a board member.

\*\***Family members** include spouse, ancestors, siblings (whole or half), children, grandchildren, great-grandchildren, and spouses of any of the above.

\*\*\***Business transactions** include, e.g., sales, leases, licenses, and performance of services, whether initiated during the year or ongoing from a prior year. Also includes joint ventures where both parties have a profits or capital interest of > 10%.

# Determining “Independence” of Board Members IRS Redesigned Form 990 (cont’d)

As to the taxable year at issue:



## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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n “Independence” is not lost merely because a board member:

- Ø Is a donor to the organization, regardless of amount
- Ø Has taken a bona fide vow of poverty and either:
  - o Receives compensation as an agent of a religious order or certain religious organizations, or
  - o Belongs to a religious order that receives sponsorship or payments from the organization
- Ø Receives financial benefits from the organization solely in the capacity of being a member of the class served by the organization

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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### n Governance and management

- Ø Covers officers, directors, trustees, key employees (“ODTKEs”)
  - o Directors or trustee – Member of the organization’s governing body, but only if the member has voting rights.
  - o Officer – Person elected or appointed to manage the organization’s daily operations

Determined by reference to articles, bylaws or resolutions

Always includes top management official and top financial official

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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n Key employee – must meet all *three* tests:

n \$150,000 test

- Ø Receives reportable compensation from organization and related entities of > \$150,000 for the calendar year ending with or within the organization's tax year

n Responsibility test (any of the following)

- Ø Has responsibilities, powers or influence over organization as a whole similar to those of officers, directors or trustees
- Ø Manages a discrete segment or activity of the organization representing 10% or more of activities, assets, income or expenses of the organization
- Ø Has or shares authority to control or determine 10% or more of organization's capital expenditures, operating budget or employee compensation

n Top 20 Test

- Ø Meet both of the foregoing tests, and is one of the 20 highest paid employees from the organization and related organizations for the applicable tax year

§ **Key Employee will include employees not historically included**

- Ø **Could include Deans, Facility Manager, Financial Aid Director**

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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- n “Business relationships” (defined)
  - n Covers current and *former* ODTKEs
  - n Inquiries related to:
    - Ø Relationships with the organization, whether direct (through 35% owned entities)
    - Ø “Family members” (defined) having such relationships with the organization (direct or indirect)
    - Ø Service as an officer, director, trustee, key employee, partner or member of an entity doing business with the organization
- n Affirmative answers require additional disclosure on Schedule L

## Schedule L - Transactions with Interested Persons

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### n Schedule L – Transaction with Interested Person

- Ø Excess benefit transactions
- Ø Loans to and from interested persons (defined)
- Ø Grants or assistance benefiting interested persons (defined)
- Ø Business transactions involving interested persons (defined)

## Schedule L (cont)

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- n “Interested Persons” include officers, directors, key employees, certain other disqualified persons and highly compensated employees that are listed on Form 990 Part VII
- n Part I requires organizations to identify Excess Benefit Transactions if they checked the “yes” boxes on lines 25a,b, or c in Part IV.
- n Part II identifies loans to and from interest persons including:
  - Ø Purpose of the loan
  - Ø Original Principal Amount
  - Ø Balance Due
  - Ø Whether the loan was approval by Board
  - Ø Written Agreement

## Schedule L (Cont.)

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- n Part III requires identification of any grants or assistance from the organization to an Interested Person or person related to an Interested Person.
  - Ø Includes identifying relationship with the organization and amount of grant
    - o This could include scholarships granted to a student of an Interested Person
  
- n Part IV requires identification of business transactions between the organization and Interested Person (including related persons of Interested Person i.e. Board Members, Officers, Key Employees & their family members).
  - Ø Must describe the transaction, list the amount of the transaction and indicate whether there is a revenue sharing agreement.
  
  - Ø Organization must report any compensation paid to professional firms if any one of the firm's partners serve on the organization's board of directors.

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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- n Questions of “independence” also looks to business dealings with the organization
- n Form 990 also asks about family or business relationships between ODTKEs
- n Sufficient to state “family relationship” or “business relationship” without further detail
- n Source of major concern, but final instructions lessen discomfort to some degree

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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### n Dealings *between* ODTKEs

#### n Three types of “business relationships”:

- Ø One employed by the other directly or indirectly (i.e., by an entity in which the other is a director, officer, key employee or > 35% owner)
  
- Ø One transacts business with other (other than in the ordinary course of business on same terms as generally offered to public) amounting to > \$10,000 during the year, either directly or indirectly
  
- Ø Both are directors, officers, or > 10% owners in the same business or investment entity

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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### n Dealings *between* ODTKEs

n “Business relationships” do not include relationships between:

Ø Attorney and client

Ø Medical professional and patient

Ø Priest/clergy and penitent/communicant

## n Other Form 990 inquiries

- Ø Management contracts
  - o Refers to delegation of management to a management firm
- Ø Changes to organizational documents
- Ø Material diversions of assets
- Ø Members, shareholders and reserved powers
  - o Is the organization organized as a stock company properly?
- Ø Contemporaneous documentation of meetings
- Ø Review of Form 990 by governing body or Board Committee
  - o Do the voting members of the Board get a copy of the final Form 990 (electronic or paper) prior to filing with the IRS?
- Ø Address for ODTKES

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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### n Policies and processes

#### n Written conflicts of interest policy

- Ø Annual disclosure of interests that could give rise to conflicts
- Ø Regular and consistent monitoring and enforcement of compliance with policy
- Ø Current disclosure statement may need to be broader to capture information necessary for Schedule L

#### n Written whistleblower policy

#### n Written document retention and destruction policy

## n Policies and processes (cont)

### n Joint venture policy

- Ø Applicable if the organization invested in, contributed assets to or participated in a joint venture with 1 or more taxable persons
- Ø Policy is geared to safeguarding assets for the organization's tax exempt purpose

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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### n Policies and processes (cont'd)

#### n Determining compensation of CEO, other officers and key employees

- Ø Review and approval by independent persons

  - Use different “independence” standards – see IRC 4958 regulations regarding “free of conflicts”

- Ø Use of comparability data

- Ø Contemporaneous substantiation of deliberations and decision

#### n Audited financial statement

#### n Board or Board committee to review Form 990

- Ø Is there a procedure in place for review (Audit Committee)?

- Ø Is there a procedure in place to provide a copy of Form 990 to the full Board?

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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### n Policies and processes (cont'd)

Ø Means of making Form 1023, 990s and 990-Ts available to public:

Organization's website

Another website

Upon request

Ø Whether and how other documents are made available to public:

Governing documents

Conflicts of interest policy

Financial statement

## Part VI, Form 990 Governance, Management & Disclosure (cont'd)

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- n Recommend that the Organization, through its Board, Management and Legal Counsel review and implement these best practices where possible
  
- n Form 990 requests descriptions of policies as of the end of the tax year.
  - Ø If policy is adopted after year end, the organization can describe the policy in Schedule O or in General Statement

# Redesigned IRS Form 990

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## Governance Questions?

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# Executive Compensation

# Part VII - Executive Compensation

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- n Major Changes in reporting of Compensation
  - Ø Compensation is reported on a calendar year basis ending within the fiscal year being reported
  - Ø Determination of officer, director, key employee is based on the organization's fiscal year
  - Ø Director/ Trustee is a member of the organization's governing board if they have voting rights
    - "Ex-Officio" or "Honorary" Director/ Trustee without voting rights is not listed
- n Much broader definition of who constitutes an officer, could expand the number of executives reported.
  - Ø Officers are determined by reference to the organizing documents, by-laws, or resolutions of the governing body
- n New Definition of reportable compensation tied to Box 5 of Form W-2 (Medicare Wages) and reportable on a calendar year basis.

## Part VII - Executive Compensation (cont)

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- n Compensation from related organizations must be reported in separate column.
- n Other compensation is reported in separate column.
  - Ø Other compensation includes deferred compensation not reported on W-2 and nontaxable benefits
  - Ø Nontaxable benefits to be reported include:
    - o Employer contributions to a qualified and nonqualified deferred compensation plan
    - o Annual increase in actuarial value in a defined benefit plan, whether vested or not
    - o Health insurance
    - o Value of housing provided by employer
    - o Educational assistance
    - o Life insurance
    - o Disability insurance
    - o Liability insurance premium (D&O Insurance)

## Part VII - Executive Compensation (cont)

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- n In addition to Current Officers and Directors, report the following:
  - Ø Key employees with reportable compensation over \$150,000
  - Ø 5 Highest Compensated Employees with reportable comp over \$100,000
  - Ø Former officers who receive more than \$100,000 of reportable comp
  - Ø Former board members who receive more than \$10,000 reportable comp in capacity of director.
- n The number of all individuals who receive more than \$100,000 from the organization has to be reported (W-2 and 1099).
- n Section B requires information on Top 5 Independent Contractors receiving more than \$100,000

## Part VII - Executive Compensation (cont)

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- n Key employee – must meet all *three* tests:
  - n \$150,000 test
    - Ø Receives reportable compensation from organization and related entities of > \$150,000 for the calendar year ending with or within the organization's tax year
  - n Responsibility test (any of the following)
    - Ø Has responsibilities, powers or influence over organization as a whole similar to those of officers, directors or trustees
    - Ø Manages a discrete segment or activity of the organization representing 10% or more of activities, assets, income or expenses of the organization
    - Ø Has or shares authority to control or determine 10% or more of organization's capital expenditures, operating budget or employee compensation
  - n Top 20 Test
    - Ø Of course, who meet both of the foregoing tests, and is one of the 20 highest paid employees from the organization and related organizations for the applicable tax year
  - This can be an Extensive Process to Identify Key Employees

## Where to Report Compensation

	Form 990, Part VII, Section A, Col. (D) or (E)			Form 990, Part VII, Section A, Col. (F)	
	Schedule J, Part II, Col.				
	B(i)	B(ii)	B(iii)	C	D
Base salary/wages/fees paid	x				
Base salary/wages/fees deferred (taxable)	x				
Base salary/wages/fees deferred (nontaxable)				x	
Bonus paid (including signing bonus)		x			
Bonus deferred (taxable in current year)		x			
Bonus deferred (not taxable in current year)				x	
Incentive compensation paid		x			
Incentive compensation deferred (taxable in current year)		x			
Incentive compensation deferred (not taxable in current year)				x	
Severance or change of control payments made			x		
Sick pay paid by employer	x				
Third party sick pay			x		

**Items marked with an asterisk (\*) are excludable from column (F) if less than \$10,000**

## Where to Report Compensation (cont)

Other compensation amounts deferred (taxable in current year)		x			
Other compensation amounts deferred (not taxable in current year)				x	
Tax gross-ups paid			x		
Vacation/sick leave cashed out			x		
Stock options at time of grant				x	
Stock options at time of exercise			x		
Stock awards paid by taxable organizations substantially vested			x		
Stock awards paid by taxable organizations not vested				x	
Stock equivalents paid by taxable organizations substantially vested			x		
Stock equivalents paid by taxable organizations not vested				x	
Loans—forgone interest or debt forgiveness			x		
Contributions (employer) to qualified retirement plan				x	
Contributions (employee deferrals) to 401(k) plan			x		

**Items marked with an asterisk (\*) are excludable from column (F) if less than \$10,000**

## Where to Report Compensation (cont)

Qualified or nonqualified retirement plan defined benefit accruals (reasonable estimate of increase in actuarial value)				x	
Qualified or nonqualified retirement defined contribution plan investment earnings (no reportable or other compensation)					
Taxable distributions from qualified retirement plan (reported on Form 1099-R) – no reportable or other compensation					
Distributions from nongovernmental 457(b) plan – no reportable or other compensation					
Amounts includible in income under 457(f)			x		
Amounts deferred (plus earnings) under 457(b) plan (vested)			x		
Amounts deferred (plus earnings) under 457(b) plan (nonvested)				x	
Contributions to nonqualified plans (vested)			x		
Contributions to nonqualified plans (nonvested)				x	

**Items marked with an asterisk (\*) are excludable from column (F) if less than \$10,000**

## Where to Report Compensation (cont)

Increase in earnings of nonqualified plan			X		
Scholarships and fellowship grants (taxable)			X		
Health benefit plan premiums (taxable)			X		
Health benefit plan premiums (nontaxable)					X
Medical reimbursement and flexible spending programs (taxable)			X		
Medical reimbursement and flexible spending programs (nontaxable)					X
Other health benefits (taxable)			X		
Other health benefits (nontaxable)					X
Life, disability, or long-term-care insurance (taxable)			X		
Life, disability, or long-term-care insurance (nontaxable)					*
Split-dollar life insurance (see Notice 2002-8)			X		
Housing provided by employer			X		

**Items marked with an asterisk (\*) are excludable from column (F) if less than \$10,000**

## Where to Report Compensation (cont)

Housing provided by employer (nontaxable)					*
Personal legal services (taxable)			X		
Personal legal services (nontaxable)					*
Personal financial services (taxable)			X		
Personal financial services (nontaxable)					*
Dependent care assistance (taxable)			X		
Dependent care assistance (nontaxable)					*
Adoption assistance (taxable)			X		
Adoption assistance (nontaxable)					*
Tuition assistance for family (taxable)			X		
Tuition assistance for family (nontaxable)					*
Cafeteria plans (taxable)			X		
Cafeteria plans (nontaxable health benefit)					X

**Items marked with an asterisk (\*) are excludable from column (F) if less than \$10,000**

## Where to Report Compensation (cont)

Cafeteria plans (nontaxable benefit other than health)					*
Liability insurance (taxable)			X		
Employer-provided automobile (taxable)			X		
Employer-subsidized parking (taxable)			X		
Travel (taxable)			X		
Moving (taxable)			X		
Meals and entertainment (taxable)			X		
Social club dues (taxable)			X		
Spending account (taxable)			X		

**Items marked with an asterisk (\*) are excludable from column (F) if less than \$10,000**

# Schedule J - Compensation Information

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- n Subset of Form 990, Part VII, Section A persons consisting of:
  - Ø Former officers, directors, trustees, key employees or highest paid employees reported in Section A (former Officers, key employees, highest compensated employees who received more than \$100K, former Directors, Trustees that received in such capacity more than \$10K, in reportable compensation from the organization and related organizations)
  - Ø Any individual where sum of reportable and other compensation from the organization and related organizations is greater than \$150,000
  - Ø Persons receiving/accurring compensation from any unrelated organization for services rendered to the organization
- n Breakout of compensation from W-2 / 1099 (base, bonus/incentive or other), deferred, nontaxable benefits (no longer includes de minimis benefits, amounts paid per an accountable plan)
  - Ø Separate lines for compensation from organization, related organizations
  - Ø Column for compensation that was reported on a prior Form 990

# Schedule J - Compensation Information (Cont.)

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- n Check-box reporting on methodology to establish compensation of CEO/Executive Director (compensation committee, independent consultant, other 990s, written employment contract, compensation survey / study, board / committee approval)
  - o Core Form – Part VI - Did process for CEO, Executive Director, or Top Mgmt Official (other officers or key employees) include review/approval by independent persons, comparability data, contemporaneous substantiation
  
- Ø Receipt of severance or change of control payment
- Ø Participate in or receive payment from supplemental nonqualified retirement plan; equity-based compensation arrangement
- Ø Compensation paid/accrued contingent on revenues/net earnings of organization or related organizations
- Ø Other non-fixed payments
- Ø Any amounts paid/accrued under the initial contract exception?
- Ø **Since Schedule J is based upon 2008 Form W-2, consideration should be given to prepare Schedule J as soon as possible to have the Board and management better understand reporting disclosure and implications.**

# Redesigned Form 990

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## Compensation Questions?

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# Financial Reporting

# Part VIII of Form 990 - Statement of Revenue

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- n Expanded contribution reporting section. Six separate categories of fundraising revenues, including federated campaigns, membership dues, fundraising events, related organizations, government grants and all other contributions not included above.
- n Page 1 (Part I) and page 6 (Part VII) of current Form 990 have been combined in one page. Organization no longer has to list UBIT exclusion codes.
- n Dividend and Interest Income is combined in one line under Investment Income.
- n No detailed schedule required now for sales of securities and non-inventory assets.
- n Separate income reporting section for gaming activities.

## Part IX of Form 990 - Statement of Expenses

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n Part IX continues current expense reporting, as noted on Part II of current 990, but adds the following new separate expense categories:

- Ø Management
- Ø Lobbying
- Ø Investment management
- Ø Information technology
- Ø Travel and entertainment expenses for public officials
- Ø Advertising and Promotion
- Ø Royalties
- Ø Professional Fundraising

# Part X and Part XI of Form 990 - Balance Sheet and Financial Statements and Reporting

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## n Part X - Balance Sheet

- Ø Relatively unchanged section.
- Ø More emphasis on program related investments and program related assets.
- Ø Most detailed information regarding assets will be reported on Schedule D.
- Ø Added an asset account for Receivables from other disqualified persons along with Receivables from officers, directors and key employees.
- Ø New escrow account liability line.

## n Part XI- Financial Statements and Reporting

- Ø New questions regarding the type of financial statement audit and whether the organization is required to have an A-133 audit.

# Schedule D - Supplemental Financial Statements

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- n Schedule D contains 14 separate sections, designed to provide structured financial attachments to replace unstructured financial data.
- n New detailed questions about organizations maintaining art, historical treasures, conservation easements, donor advised funds, endowment funds, escrow and custodial accounts, etc.
- n Requires more detail about investments than current Form 990 (i.e. cost or book value of investment)
- n Requires text of FIN 48 footnote from AFS to be printed in Schedule.
- n New section for reconciliation of Net Assets and expanded section for reconciliation of Audited Financial Statement to 990
- n Current Form 990 Part IV-A & B are included on Schedule D
  - Ø **Reconciliation is not required if tax- exempt organization is part of consolidated financial statement.**
    - **Recommend preparing reconciliation and include on Schedule**  
**O**

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# Tax Exempt Bonds

# Schedule K - Tax Exempt Bonds

- Organizations do not report bonds issued prior to 2003
- Detailed Information required on the Bond Issue, Bond Proceeds, Private Use and Arbitrage:
  - Ø Issuer name and EIN, CUSIP #
  - Ø Description of purpose, date issued, whether the bonds have been defeased
  - Ø Issue price, amount in reserve fund, principal amount outstanding, principal amount defeased, principal amount retired, issuance cost from proceeds, etc.
  - Ø A series of private use questions regarding ongoing activities on the debt financed property
- Part II- Proceeds, Part III- Private Business Use and Part IV- Arbitrage is optional for 2008 but required for 2009
- **Key Issue:** Identifying and tracking private use of exempt use property

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# Other Redesigned Form 990 Schedules Requiring Planning

## Schedule C - Political Campaign and Lobbying Activities

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- n The lobbying section is virtually the same as current Schedule A, Part VI-A and B.
- n Combines all inquiries regarding political activities into one schedule for section 501(c)(3), (c)(4), (c)(5) and (c)(6) organizations.
- n Expanded questions regarding section 527 organizations and Form 1120-POL filings.
- n Space is provided for Supplemental Information.

## Schedule F – Statement of Activities Outside the U.S

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- n IRS requires following information if aggregate revenue or expenses from activities exceed \$10,000:
  - Ø Regions (not countries) where the organization conducts activities. IRS moved to “regions” from “countries” in the interest of worker safety.
  - Ø Number of accounts or offices in the region
  - Ø types of activities, i.e. program services, fundraising, etc.
  - Ø number of employees or agents,
  - Ø Total expenditures in the region
  - Ø Identification of grants made and the relationship between grantor and grantee
- **Key Point: Foreign Programs, including Foreign Captive Insurance Company Activities must be reported.**

## Schedule F – Statement of Activities Outside the U.S (cont)

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- n For grants over \$5,000 made to organizations and individuals outside of the U.S.
  - Ø Names of recipients do not have to be specifically designated in the interest of their safety, but the following information is required.
  - Ø IRS Code and EIN
  - Ø Region
  - Ø Purpose of grant
  - Ø Amount of Cash
  - Ø Manner of Cash Disbursement
  - Ø Amount of Non-Cash
  - Ø Description of Non-Cash Amount

# Schedule G - Fundraising Activities

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- n IRS wants detailed information with respect to fundraising activities conducted by officers and directors, in which they are paid more than \$5,000.
- n Organizations must list all states in which they are registered or licensed to solicit funds.
- n Detailed schedules required for special events fund raising including cash and non-cash prizes and other costs, including rent.
- n Schedule must also indicate whether the fundraiser has custody or control of the contributions and the amounts retained by the fundraiser and the organization.
- n **Key Point: Problematic Issues relate to accounting for Athletic Department Events**
  - ∅ **Centralization of reporting is very important**

## Schedule I - Grants in the U.S.

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- n Organization is required to provide name, EIN, and exempt status of recipient organization, as well as the amount of cash and/or fair market value of non-cash grant, method of valuation for non-cash grants, description of non-cash grant and purpose of the grant, and for grants to individuals, the total number of recipients.
- n Schools are exempted from listing individual grants and scholarships.
- n Organization must describe the procedures it uses to monitor the use of grant funds in the U.S.
- n Organization must maintain records to substantiate amount of grants, grantees' eligibility for the grants, and the selection criteria used.

# Schedule M - Non-Cash Contributions

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- n Requires organizations that receive more than \$25,000 in non-cash contributions to report the contributions in specific categories (ie. Art, public securities, other securities, cars, books, ...)
  - Ø Additional information to be provided include method of valuation, amount of revenue reported on Form 990, Non-cash revenue and the amount reported on the balance sheet of Form 990 and the number of Form 8283s the organization received.
  - Ø Organization must indicate whether it has a gift acceptance policy that requires the review of any non standard contribution and whether it uses third parties to solicit, process or sell non-cash contributions.

## Schedule O - Supplemental Information to Form 990

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- n This schedule was designed for electronic filers who were concerned with not having enough space to provide complete answers to question throughout the Form.
- n This schedule is to be used to provide additional information as required by the following:
  - Ø Form 990, Part III, Questions 2 (new program services), 3 (cease significant program service) and 4d (descriptions of other program services)
  - Ø Form 990, Part V, Question 3b to provide explanation for not filing Form 990-T if UBI exceeds \$1,000.
  - Ø Form 990, Part VI, Section A, all “yes” answers for questions 2-7 and “no” answers for questions 8 and 9b should be described in Schedule O.
  - Ø Form 990, Part VI, Section B to describe monitoring and enforcement of Conflict of Interest Policy and the process used for determining compensation of the CEO and other officers of the organization.

# Schedule R - Related Organizations

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n Organizes all information about related organizations into one schedule

Ø Schedule is divided into 6 sections:

- o Part I- Disregarded Entities
- o Part II- Related Tax Exempt Organizations
- o Part III- Related Organizations Taxable as a Partnerships
- o Part IV- Related Organizations Taxable as a Corporation

## Schedule R (Cont.)

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- n Part V – Transactions with Related Organizations and Noncharitable Exempt Organizations
  - Ø Gifts, grants or capital contributions
  - Ø Sale, purchase or exchange of assets
  - Ø Loans or loan guarantees
  - Ø Lease of facilities, equipment, etc
  - Ø Performance of services
  
- n Part VI- Unrelated Organizations Taxable as a Partnership.
  - Ø Required if the organization conducted more than 5% of its activities in the partnership as measured by total assets or gross revenue.

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# Redesigned Form 990 Schedules That Have Not Materially Changed From Prior Year Reporting

# Schedule B - Contributors

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- n Schedule B is unchanged from prior years.
- n Contributors who contribute more than \$5,000 must be reported unless;
- n Organization meets the “one-third contribution test” of sections 509(a)(1) and 170(b)(1)(A)(vi), then the “two percent of total contribution” test applies.

# Schedule E - Schools

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- n This schedule is unchanged from prior years.
- n Formerly, Part V of Schedule A of current Form 990.

# How to Prepare For the Revised Form 990?

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## n **WTAS' Recommended Next Steps:**

- Ø High Level Re-assessment of Current Forms 990 and 990-T Process in light of the Redesigned Form 990 Reporting and Disclosure Requirements
  - o This step should be done in concert with management, your tax advisor and legal counsel
  
- Ø Coordination with Legal and Other Applicable Departments to Determine Best Approach to Comply With New IRS Requirements
  - o Consider a formal study or process to ensure completion and implementation of needed policy and operational changes prior to 6/30/2009 fye
  - o Consider engaging Board in this process through education and direct involvement

# How to Prepare For the Revised Form 990?

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- Ø Review, Development and Approval of Changes to Governance and other Administrative Policies and Procedures To Ensure Compliance That the Organization Has Considered and Implemented IRS Recommended Best Practices Wherever Possible
  - o Time is sometimes required to vet through existing policies to determine whether they need to be revised
  
- Ø Plan and Develop all required IRS Disclosure Statements With an “Eye” to Better Position the Organization to the General Public and Regulators
  - o Time is necessary to have all involved parties to comment on the impact of the proposed disclosures
  - o Certain IRS Schedules can be prepared now to permit adequate review by the Board, Management and Legal Counsel (i.e., Schedule J- Compensation)
  
- Ø Remap Your General Ledger to the Redesigned Form 990 Financial Reporting Areas
  
- **Time Invested Now To Develop a Coordinated Form 990 Preparation & Review Process Will Help Minimize Time and Dollars Spent in Future Years**

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# Current State of Foreign Account Reporting and Form TD F 90-22.1

# Current State of FBAR

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## n FBAR Basics

- Ø 2 categories of US persons who are obligated to submit FBAR
  - “financial interest” in the foreign financial account
  - “signatory or other authority” over the financial account
- Ø Filing is due by June 30<sup>th</sup> for accounts held the previous calendar year

## ■ 2008 and Prior Years

- Ø Filing Form TD F 90-22.1 for 2003 through 2008 prior to June 30, 2010 without penalty if:
  - Filer has no personal interest in the account (corporate responsibility only) and
  - Filing comply with future guidance to be issued by IRS

# Current State of FBAR

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## n Tax Exempt Organization and the FBAR

- ∅ May have reportable foreign accounts as part of their program-related, offshore investments or captive insurance activities.
- ∅ In addition to the organization, officers, directors and/ or employees may have filing requirement if they have “signatory or other authority” over an account

## ■ Signatory or Other Authority

- ∅ Signatory authority occurs when a person could control the disposition of money or other property by delivery of signed document
- ∅ Other authority occurs when a person could exercise similar power directly or indirectly by communication with the bank or other person with whom the account is maintained.
- ∅ Filing is required regardless whether the person actually exercises their authority over the account during the year.
- ∅ Review answer on personal Form 1040 re: Foreign Accounts

# Current State of FBAR

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## n What is a Foreign Financial Account

### ∅ Includes the following

- Bank Account
- Securities
- Securities Derivatives
- Brokerage accounts
- Other financial instruments account
- Other accounts maintained in a foreign institution

### ∅ An account is foreign if it is held by a financial institution located outside of the U.S.

### ∅ Notice 2009-62 “Commingled Accounts” include:

- Foreign Hedge Funds
- Foreign Mutual Fund
- Foreign Private Equity Funds

# Disclaimer

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