

Raising the Bar For Non-Profits' Accountability and Transparency

Sarbanes-Oxley Act of 2002

IRS Form 990 Revisions for '09

Sarbanes-Oxley

Public Company Accounting Reform and Investor Protection Act



Goals of “The Act”*

- Good governance practices
 - Accountable financial management
 - *Passage of the Sarbanes-Oxley Act of 2002 only apply to “issuers”. An “issuer” is any person who issues or proposes to issue any security that is registered under the 1934 Securities Exchange Act of 1934.
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Objectives

- ❑ Enhance the **financial disclosures** addressed in Title IV of “The Act”
 - ❑ Enhance **auditor independence** (Titles I and II)
 - ❑ **Improve** corporate **governance** (Title III)
 - ❑ **Protect** public company **employees**, whistleblowers and shareholders (Titles III & XI)
 - ❑ **Increase accountability** of corporate governance (Title III & IX)
 - ❑ **Deter** and punish **fraudulent behavior** (Titles VIII, IX and XI)
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Implications for Non-Profit Corporations

- ❑ Financial reports plainly written and understandable for stakeholders and others
 - ❑ Greater auditor independence and reporting to governing body
 - ❑ Attorney obligation to represent interest of the organization—not individuals who direct the affairs of the organization
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Affects Everybody

- How boards fulfill oversight responsibility
 - Understanding and assessing risk (via policy)
 - Assuring management implements internal controls
 - Whistle Blowing
 - Retaliating against employees who provide truthful information regarding commission of a Federal crime
 - Record Keeping and Retention
 - It is a crime for anyone to attempt to succeed in altering destroying, mutilating or concealing a record intending to impair record's integrity or availability
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Internal Revenue Service Form 990

New Form Information, Inspection
and Copy Requirements
(Effective with 2009 Filings)

Form 990, “Return of Organization Exempt from Income Tax”

- Under the Internal Revenue Code, an organization exempt from federal income taxation must file an “annual return” stating its gross income, receipts, disbursements, and other information prescribed by the Internal Revenue Service (“Service”)
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Guiding Principles

- The Final “Revised” Form 990 is based upon the following three guiding principles:
 - **Enhancing transparency** to provide a realistic picture of the organization and its operations
 - **Promoting compliance** by accurately reflecting the organization’s operations and use of assets
 - **Minimizing** the **burden** on the organization
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Required Filing Information

- Completing an annual return usually involves providing:
 - Gross income
 - Member and affiliate dues and assessments
 - Expenses, disbursements, assets, liabilities, and net worth
 - Contributions, gifts, and grants
 - Director, officer, and key employee information
 - Lobbying and grassroots expenditures.
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Inspection and Copy Requirements

- Upon request, a member of the public may inspect and copy at the "Service" an exempt organization's annual return.

 - Upon written request, the "Service" will furnish copies of an exempt organization's annual return.
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Public Inspection and Copy Requirements

- In general, an exempt organization must make available for "inspection" during "regular business hours" by "any individual," "without charge," copies of its annual return.

 - An annual return includes:
 - Any amended annual return
 - Schedules, attachments, and supporting documents
 - For each of the three previous years (collectively, "Form 990")
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Organization's Obligation

- Make Form 990 available* at:
 - It's principal office
 - At any regional office
 - A site the organization regularly "maintains" and has part-time or full-time employees normally working at least 120 aggregate hours a week.

 - *For each of the three previous years collectively, "Form 990"
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Making Inspection & Copies Available

- Upon request by individual in person
 - Immediately
 - Without charge (other than reasonable reproduction costs)
 - Upon written request by an individual within 30 days of the request
 - If “unusual circumstances” place an “unreasonable burden” on providing the copy of the same business day, then the organization may provide the copy by the earliest of the:
 - Business day after the unusual circumstance cease
 - Fifth business day after the request
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Failure to Comply

- In general, if an exempt organization officer, director, trustee, employee, or other individual under a “duty” to make the organization’s Form 990 available for public inspection or provide a requested copy of the Form 990 improperly fails the duty
 - The Person must pay \$20 for each day the failure continues, but
 - With a \$10,000 maximum penalty for failures
 - If failure to provide requested copy is “willful,” then the Person must pay \$5,000 for each Form 990
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Executive Compensation Compliance Initiative

- In 2004, the Service implemented its “Executive Compensation Compliance Initiative.”

 - In March 2007, the Service released its “Report on Exempt Organizations Executive Compensation Compliance Projects.”

 - Among other things, the Report noted:
 - The existence of “**significant**” **errors and omissions** in reporting officer and employee compensation
 - The need for additional “training for agents”
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Information to be Reported

- Completing an annual return usually involves providing:
 - Gross income
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 - Contributions, gifts, and grants
 - Lobbying and grassroots expenditures
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Required Officer, Management & Staff Information to be Reported

- Director, officer, and key employee (compensation) information
 - “Director” is a voting member of governing body
 - “Officer” is a person elected or appointed to manage operations
 - “Key Employee”:
 - Has responsibilities, powers over the organization as a whole
 - Manages a discrete segment or activity representing 5% or more of the organization’s activities, assets, income or expenses
 - Has or shares authority to control or determine 5% or more of capital expenditures
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Requests for Policy Information

- The new Form 990 asks whether the organization has written policies in the following areas:
 - Conflict of Interest Policy
 - Whistleblower Policy
 - Document Retention Policy
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IRS Form 990 Proposed Changes

“The new 990 aims to give both the IRS and the public ***an improved window*** into the way tax-exempt organizations go about their vital mission.”

*-- Kevin Brown, Acting Commissioner
of the Internal Revenue Service
(June 14, 2007 News Release)*

The 10 Truths of Transparency

"What is Transparency?", Richard W. Oliver, McGraw Hill Co., Inc., 2004

- ❑ 1. What's done private is eventually public
 - ❑ 2. What's acceptable today probably won't be tomorrow.
 - ❑ 3. If it looks bad today, tomorrow it'll look worse.
 - ❑ 4. Today's penalties will be worse tomorrow.
 - ❑ 5. Each denial generates more pressure to disclose.
 - ❑ 6. With each denial, enemies and detractors multiply.
 - ❑ 7. With each denial, more friends desert you.
 - ❑ 8. The more denials, the more severe the punishment.
 - ❑ 9. Covering up is more damaging than the original act.
 - ❑ 10. Nothing is forgotten, and seldom forgiven.
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