

Instructions for Form 990

Return of Organization Exempt From Income Tax

**Under section 501(c), 527, or 4947(a)(1)
of the Internal Revenue Code
(except private foundations)**

Volume 8 of 10



Department of the Treasury
Internal Revenue Service

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Through the IRS

Use Form 4506-A, Request for a Copy of Exempt or Political Organization IRS Form, to request:

- A copy of an exempt or political organization's return, report, notice, or exemption application; or
- An inspection of a return, report, notice, or exemption application at an IRS office.

Complete information is available on the IRS website at [IRS.gov/CharitiesNon-Profits/Copies-of-EO>ReturnsAvailable](https://www.irs.gov/CharitiesNon-Profits/Copies-of-EO>ReturnsAvailable).

The IRS can't disclose portions of an exemption application relating to any trade secrets, etc. Additionally, the IRS generally can't disclose the names and addresses of contributors. See the Instructions for Schedule B (Form 990) for more information about the disclosure of that schedule.

Notice 2008-49, 2008-20 I.R.B. 979, provides interim guidance regarding the requirement that section 501(c)(3) organizations and the IRS make Form 990-T available for public inspection.

Form 990 or 990-EZ can only be requested for section 527 organizations for tax years beginning after June 30, 2000.

A return, report, notice, or exemption application can be inspected at an IRS office free of charge. Copies of these items can also be obtained through the organization as discussed in the following section.

Through the Organization

Public inspection and distribution of certain returns of unrelated business income. Section 501(c)(3) organizations that are required to file Form 990-T after August 17, 2006, must make Form 990-T available for public inspection under section 6104(d)(1)(A)(ii).

Public inspection and distribution of returns and reports for a political organization. Section 527 political organizations required to file Form 990 or 990-EZ must, in general, make their Forms 8871, 8872, 990, or 990-EZ available for public inspection in the same manner as annual information returns of section 501(c) organizations are made available. See *Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations*, later. Generally, Form 8871 and Form 8872 are available for inspection and printing at [IRS.gov/Charities-and-Nonprofits](https://www.irs.gov/Charities-and-Nonprofits).

Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations. Under Regulations sections 301.6104(d)-1 through -3, a tax-exempt organization must:

- Make its application for recognition of exemption and its annual information returns available for public inspection without charge at its principal, regional, and district offices during regular business hours;
- Make each annual information return available for a period of 3 years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later; and
- Provide a copy without charge (for Form 990-T, this requirement applies only to Forms 990-T filed after August 17, 2006), other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection to any individual who makes a request

for a copy in person or in writing
(except as provided in Regulations
sections 301.6104(d)-2 and -3).

Definitions

Tax-exempt organization is any organization that is described in section 501(c) or (d) and is exempt from taxation under section 501(a). The term “tax-exempt organization” also includes any section 4947(a)(1) nonexempt charitable trust or nonexempt private foundation that is subject to the reporting requirements of section 6033.

Application for tax exemption includes:

- Any prescribed application form (Form 1023, 1023-EZ, 1024, or 1024-A),
- All documents and statements the IRS requires an applicant to file with the form,

- Any statement or other supporting document submitted in support of the application, and
- Any letter or other document issued by the IRS concerning the application.

Application for tax exemption

doesn't include:

- Any application for tax exemption filed before July 15, 1987, unless the organization filing the application had a copy of the application on July 15, 1987;
- In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or
- Any material that isn't available for public inspection under section 6104.

Caution: If there is no prescribed application form, see Regulations section 301.6104(d)-

1(b)(3)(ii). ***Annual information return*** includes:

- An exact copy of the Form 990 or 990-EZ filed by a tax-exempt organization as required by section 6033,
- Any amended return the organization files with the IRS after the date the original return is filed (both the original and amended return are subject to the public inspection requirements), or
- An exact copy of Form 990-T if one is filed by a section 501(c)(3) organization.

The copy must include all information furnished to the IRS on Form 990, 990-EZ, or 990-T as well as all statements, attachments, and supporting documents, except for the name and address of any contributor to the organization. See the Instructions for Schedule B (Form 990). However,

statements, attachments, and supporting documents filed with Form 990-T that don't relate to the imposition of unrelated business income tax aren't required to be made available for public inspection and copying. See Notice 2008-49.

Annual returns more than 3 years old. An annual information return doesn't include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing the return) or is actually filed, whichever is later.

If an organization files an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the IRS.

Local or subordinate organizations. For rules relating to annual information returns of local or subordinate organizations, see Regulations section 301.6104(d)-1(f)(2).

Regional or district offices. A regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid employees, whether part-time or full-time, whose aggregate number of paid hours a week is normally at least 120.

A site isn't considered a regional or district office, however, if:

- The only services provided at the site further exempt purposes (daycare, health care, scientific or medical research); and
- The site doesn't serve as an office for management staff, other than managers who are involved solely in managing the exempt function activities at the site.

Special Rules Relating to Public Inspection

Permissible conditions on public inspection. A tax-exempt organization:

- Can have an employee present in the room during an inspection;
- Must allow the individual conducting the inspection to take notes freely during the inspection; and
- Must allow the individual to photocopy the document at no charge, if the individual provides photocopying equipment at the place of inspection.

Organizations that don't maintain permanent offices. A tax-exempt organization with no permanent office:

- Must make its application for tax exemption and its annual information returns available for inspection at a reasonable location of its choice;

- Must permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day;
- Can mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester instead of allowing an inspection; and
- Can charge the requester for copying and actual postage costs only if the requester consents to the charge.

An organization that has a permanent office, but has no office hours, or very limited hours during certain times of the year, must make its documents available during those periods when office hours are limited, or not available, as though it were an organization without a permanent office.

Special Rules Relating to Copies

Time and place for providing copies in response to requests made in person. A tax-exempt organization must:

- Provide copies of required documents under section 6104(d) in response to a request made in person at its principal, regional, and district offices during regular business hours; and
- Provide copies to a requester on the day the request is made, except for unusual circumstances (explained next).

Unusual circumstances. In the case of an in-person request, where unusual circumstances exist so that fulfilling the request on the same business day causes an unreasonable burden to the tax-exempt organization, the organization must provide the copies no later than the next business day following the day that the unusual

circumstances cease to exist, or the 5th business day after the date of the request, whichever occurs first.

Unusual circumstances include:

- Requests received that exceed the organization's daily capacity to make copies;
- Requests received shortly before the end of regular business hours that require an extensive amount of copying; or
- Requests received on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties (student registration or attending an off-site meeting or convention), rather than its regular administrative duties.

Agents for providing copies. For rules relating to use of agents to provide copies,

see Regulations sections 301.6104(d)-1(d)(1)(iii) and -1(d)(2)(ii) (C).

Request for copies in writing. A tax-exempt organization must honor a written request for a copy of documents (or the requested part) required under section 6104(d) if the request:

1. Is addressed to (and delivered by mail, electronic mail, fax, or a private delivery service, as defined in section 7502(f)) a principal, regional, or district office of the organization; and
2. Sets forth the address to which the copy of the documents should be sent.

Time and Manner of Fulfilling Written Requests

IF the organization...	THEN the organization...
receives a written request for a copy	must mail the copy of the requested documents (or the requested parts) within 30 days from the date it receives the request.
mails the copy of the requested document	is deemed to have provided the copy on the postmark date or private delivery mark (if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt).
requires payment in advance	is required to provide the copies within 30 days from the date it receives payment.
receives a request or payment by mail	is deemed to have received it 7 days after the date of the postmark, absent evidence to the contrary.
receives a request transmitted by email or fax	is deemed to have received it the day the request is transmitted successfully.
receives a written request without payment or with an insufficient payment, when payment in advance is required	must notify the requester of the prepayment policy and the amount due within 7 days from the date of the request's receipt.
receives consent from an individual making a request	can provide a copy of the requested document exclusively by email (the material is provided on the date the organization successfully transmits the email).

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Request for a copy of parts of a document. A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any specific part or schedule of its application or return. A request for a copy of less than the entire application or less than the entire return must specifically identify the requested part or schedule.

Fees for copies. A tax-exempt organization can charge a reasonable fee for providing copies. Before the organization provides the documents, it can require that the individual requesting copies of the documents pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual doesn't pay the fee within 30 days, or if the individual pays the fee by check and the check doesn't clear upon deposit, the organization can disregard the request.

Form of payment.

- a. ***Request made in person.*** If a tax-exempt organization charges a fee for copying, it must accept payment by cash and money order for requests made in person. The organization can accept other forms of payment, such as credit cards and personal checks.
- b. ***Request made in writing.*** If a tax-exempt organization charges a fee for copying and postage, it must accept payment by certified check, money order, and either personal check or credit card for requests made in writing. The organization can accept other forms of payment.

Avoidance of unexpected fees. Where a tax-exempt organization doesn't require prepayment and a requester doesn't enclose payment with a request, an organization must receive consent from a requester before

providing copies for which the fee charged for copying and postage exceeds \$20.

Documents to be provided by regional and district offices. Except as otherwise provided, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office for allowing public inspection and providing copies of its application for tax exemption and annual information returns.

A regional or district office isn't required, however, to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing the return) or is actually filed, whichever is later.

Documents Provided by Local and Subordinate Organizations

Applications for tax exemption. Except as otherwise provided, a tax-exempt

organization that didn't file its own application for tax exemption (because it is a local or subordinate organization covered by a group exemption letter) must, upon request, make available for public inspection, or provide copies of, the application submitted to the IRS by the central or parent organization to obtain the group exemption letter and those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter.

However, if the central or parent organization submits to the IRS a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it. The local or subordinate organization must permit public inspection, or comply with a request for

copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. See Regulations section 301.6104(d)-1(f) for further information.

Annual information returns. A local or subordinate organization that doesn't file its own annual information return (because it is affiliated with a central or parent organization that files a group return) must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization.

However, if the group return includes separate statements for each local or subordinate organization included in the group return, the local or subordinate organization receiving the request can omit any statements relating only to other organizations included in the group return.

The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day.

When a requester seeks inspection, the local or subordinate organization can:

- Mail a copy of the applicable documents to the requester within the same time period instead of allowing an inspection; and
- Charge the requester for copying and actual postage costs, if the requester consents to the charge.

If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group

return in the time and manner specified under *Request for copies in writing*, earlier.

The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of group returns filed by the central or parent organization. The central or parent organization must fulfill the requests in the time and manner specified under *Special Rules Relating to Public Inspection* and *Special Rules Relating to Copies*, earlier.

Failure to comply. Any person who doesn't comply with the public inspection requirements will be assessed a penalty of \$25 for each day that inspection wasn't permitted, up to a maximum of \$13,000 for each return. The penalties for failure to comply with the public inspection requirements for applications are the same as those for annual returns, except that the \$13,000 limitation doesn't apply (sections 6652(c)(1)(C) and (D)). Any person who

willfully fails to comply with the public inspection requirements for annual returns or exemption applications will be subject to an additional penalty of \$5,000 (section 6685).

Making Applications and Returns Widely Available

A tax-exempt organization isn't required to comply with a request for a copy of its application for tax exemption or an annual information return if the organization has made the requested document widely available (see below).

An organization that makes its application for tax exemption and/or its annual information return widely available must also make the document available for public inspection, as required under Regulations section 301.6104(d)-1(a).

A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if

the organization complies with the Internet posting requirements and the notice requirements given below.

Internet posting. A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a web page that the tax-exempt organization establishes and maintains, or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a web page established and maintained by another entity. The document will be considered widely available only if: • The web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

- The document is posted in a format that, when accessed, downloaded, viewed, and printed in hard copy, exactly reproduces the image of the

application for tax exemption or annual information return as it was originally filed with the IRS, except for any information permitted by statute to be withheld from public disclosure; and

- Any individual with access to the Internet can access, download, view, and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without payment of a fee to the tax-exempt organization or to another entity maintaining the web page.

Reliability and accuracy. In order for the document to be widely available through an Internet posting, the entity maintaining the web page must have procedures for ensuring the reliability and accuracy of the document

that it posts on the page and must take reasonable precautions to prevent alteration, destruction, or accidental loss of the document when posted on its page. In the event that a posted document is altered, destroyed, or lost, the entity must correct or replace the document.

Notice requirement. If a tax-exempt organization has made its application for tax exemption and/or an annual information return widely available, it must notify any individual requesting a copy where the documents are available (including the address on the Internet, if applicable). If the request is made in person, the organization must provide the notice to the individual immediately. If the request is made in writing, the notice must be provided within 7 days of receiving the request.

Tax-Exempt Organization Subject to Harassment Campaign

Under section 6104(d)(4), if the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) determines that the organization is being harassed, a tax-exempt organization isn't required to comply with any request for copies that it reasonably believes is part of a harassment campaign.

Whether a group of requests is a harassment campaign depends on the relevant facts and circumstances such as:

- A sudden increase in requests,
- An extraordinary number of requests by form letters or similarly worded correspondence,
- Hostile requests,

- Evidence showing bad faith or deterrence of the organization's exempt purpose,
- Prior provision of the requested documents to the purported harassing group, and
- A demonstration that the organization routinely provides copies of its documents upon request.

A tax-exempt organization can disregard any request for copies of all or part of any document beyond the first two received within any 30-day period or the first four received within any 1-year period from the same individual or the same address, whether or not the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) has determined that the organization is subject to a harassment campaign.

A tax-exempt organization can apply for a determination that it is the subject of a harassment campaign and that compliance with requests that are part of the campaign wouldn't be in the public interest by submitting a signed application to the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). See Rev. Proc. 2025-1, 2025-1 I.R.B. 1, or as updated annually.

In addition, the organization can suspend compliance with any request it reasonably believes to be part of the harassment campaign until it receives a response to its application for a harassment campaign determination. However, if the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) determines that the organization didn't have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief

that a request was part of the campaign, the officer, director, trustee, employee, or other responsible individual of the organization remains liable for any penalties for not providing the copies in a timely fashion. See Regulations section 301.6104(d)-3.

Appendix E. Group Returns— Reporting Information on Behalf of the Group

Except where otherwise instructed, where a line calls for a dollar amount or numerical data, the **central organization** filing the **group return** must aggregate the data from all the **subordinate organizations** included in the group return and report the aggregate number. For example, in answering Form 990, Part I, line 6, the total number of volunteers for all of the subordinate organizations would be reported.

For purposes of Form 990, Part III, summarize the mission and activities of all of

the subordinate organizations as if all of the subordinate organizations were one entity.

In general, if a line requires a “Yes” or “No” answer and the answer isn’t the same for all subordinate organizations to which the line applies, then check “Yes” and explain the answer in the schedule’s supplemental information section (if applicable) or on Schedule O (Form 990). For the following lines, however, check “No” if the answer is “No” for any of the subordinates to which the line applies, and explain on Schedule O (Form 990).

- Form 990, Part V, lines 1c, 2b, 3b, 5c, 6b, 7b, 7g, and 7h.
- Form 990, Part VI, lines 8a, 8b, 10b, 12b, and 12c.
- Schedule C (Form 990), Political Campaign and Lobbying Activities, Part I-B, lines 3 and 4a.

- Schedule C (Form 990), Part I-C, line 4.
- Schedule C (Form 990), Part II-A, line 1j.
- Schedule C (Form 990), Part II-B, line 2d.
- Schedule C (Form 990), Part III-A, lines 1–3.
- Schedule D (Form 990), Supplemental Financial Statements, Part I, lines 5 and 6.
- Schedule D (Form 990), Part II, lines 5 and 8.
- Schedule E (Form 990), Schools, lines 1–4d and 7.
- Schedule F (Form 990), Statement of Activities Outside the United States, Part I, line 1.

- Schedule G (Form 990), Supplemental Information Regarding Fundraising or Gaming Activities, Part III, line 9a.
- Schedule I (Form 990), Grants and Other Assistance to Organizations, Governments, and Individuals in the United States, Part I, line 1.
- Schedule J (Form 990), Compensation Information, Part I, lines 1b and 2.
- Schedule M (Form 990), Noncash Contributions, Part I, line 31.
- Schedule N (Form 990), Liquidation, Termination, Dissolution, or Significant Disposition of Assets, Part I, lines 3, 4a– b, 5, and 6a–c.

The following is a list of other special instructions for group returns.

1. **Item B. Final return/terminated.** If the **central organization** is terminating its **group exemption** and

filing its final **group return**, don't check the "Final return/terminated" box. Refer to Rev. Proc. 80-27, 1980-1 C.B. 677, as modified, for procedures for terminating the group exemption.

2. **Item C. Name.** Enter the name of the group exemption. Note that the group exemption may have a different name than the central organization's name.
3. **Item D. EIN.** Use the special **EIN** (separate from the central organization's EIN) that is issued solely for the purposes of the group return. The central organization must have received a group exemption letter before it can file a group ruling.
4. **Items E, F, and J.** Enter information for the central organization only.
5. **Item H. Group returns.** If the organization answers "Yes" to item H(a) but "No" to item H(b) (not all

subordinate organizations are included in the group return), then attach a list (not on Schedule O (Form 990)) showing the name, address, and EIN of each subordinate organization included in the group return. Additionally, attach a list (not on Schedule O (Form 990)) showing the name, address, and EIN of each subordinate organization not included in the group return. See Regulations section 1.6033-2(d)(2)(ii).

6. **Item K. Form of organization.** Check "Other" if the group has more than one form of organization.
7. **Item L. Year of formation.** Leave blank for group return.
8. **Item M. State of legal domicile.** Leave blank for group return.
9. **Part IV, lines 14b–19, 21–22, and 29, dollar thresholds.** Apply the

dollar thresholds for the aggregate data for the group as a whole, not subordinate by subordinate.

10. **Part IV, line 20. Hospitals.** Answer “Yes” if any affiliate included within the group return operated a hospital facility.

11. **Part VI, line 2. Relationships among officers, directors, trustees, and key employees.** Describe on Schedule O (Form 990) only relationships between **officers, directors, trustees, and key employees** of the same **subordinate organization**, not relationships between officers, directors, trustees, and key employees of one subordinate and officers, directors, trustees, and key employees of another subordinate.

12. **Part VI, line 4. Significant changes to organizational documents.** Report only changes to standardized

organizational documents maintained by the central organization that subordinates are required to adopt.

13. **Part VI, line 5. Significant diversion of assets.** In determining whether a diversion of a subordinate's assets meets the 5%/\$250,000 reporting threshold, consider only the total assets and gross receipts of that subordinate, not of the parent or other subordinates.
14. **Part VI, line 20. Person who possesses books and records.** Identify the person who possesses the information furnished by the subordinate organizations used in compiling the group return.
15. **Part VII. Compensation of officers, directors, trustees, key employees, and highest compensated employees.** File a single consolidated Form 990, Part VII, showing the

officers, directors, trustees, and key employees of each subordinate included in the group return, and a single consolidated Schedule J (Form 990), Part II, for all officers, directors, trustees, and key employees above the compensation thresholds. Report the five **highest compensated employees** and **independent contractors** above \$100,000 for the whole group of subordinates, not for each subordinate. If one or more officers, directors, trustees, key employees, or highest compensated employees received compensation from more than one organization in the group, the person's compensation from the several organizations must be reported in column (D).

16. **Part VII. Compensation from related organizations.** Report compensation from an organization

that is included in the group ruling but that isn't among the subordinates included in the group return as compensation from a related organization in column (E), even if the related organization isn't required to be reported on Schedule R (Form 990), Related Organizations and Unrelated Partnerships.

17. **Part XII, lines 2a–2b. Compiled, reviewed, or audited financial statements.** Answer “Yes” only if all the subordinates in the group had their financial statements compiled, reviewed, or audited individually (rather than on a consolidated basis).
18. **Schedule A (Form 990), Part I. Reason for public charity status.** If the subordinates don't all have the same public charity status, then check the public charity status box for the largest number of subordinates in the

group, and explain on Schedule A (Form 990), Public Charity Status and Public Support, Part IV. However, if any section 509(a)(3) organizations are among the subordinates in the group return, also answer lines 12e through 12g.

19. **Schedule A (Form 990), Parts II and III. Support statements.**

Report aggregate data for all subordinates with the public charity status corresponding to Part II or III.

20. **Schedule A (Form 990), Parts IV through VI.** In addition to Part I in paragraph 18 above, if any section 509(a) (3) organizations are among the subordinates in the group return, also complete the relevant sections of Parts IV and V. If an answer in Part IV requires more information with respect to any section 509(a)(3) organizations, then answer with

respect to those organizations and provide that additional information in Part VI. For instance, if the group includes 50 section 509(a)(3) organizations, and one of them doesn't list all of its supported organizations by name in its governing documents, then answer "No" on Part IV, Section A, line 1, and explain in Part VI. If the group includes more than one Type III non-functionally-integrated supporting organization, then provide aggregate data in Part V.

21. **Schedule B (Form 990).**

Contributors. Report a consolidated Schedule B (Form 990) for all subordinates included in the group return. Apply the dollar and percentage thresholds (including the greater of \$5,000 or 2% threshold for section 501(c)

22. (3) organizations described in sections 509(a)(1) and 170(b)(1)(A)(vi)) subordinate by subordinate, not on a group basis.
23. **Schedule C (Form 990), Part II-A. Lobbying expenditures and affiliated groups.** Complete Part II-A, column (b), for the group as a whole. In column (a), except on lines 1g and 1h, include the amounts that apply to all electing members of the group if they are included in the group return. If the group return includes organizations that belong to more than one affiliated group, enter in column (b) the totals for all the groups.
24. **Schedule D (Form 990), Part X. Other liabilities.** The filing organization can summarize that portion, if any, of the **FIN 48** (ASC 740) footnote that applies to the liability of multiple organizations

including the organization (for example, as a member of a group with consolidated financial statements), to describe the filing organization's share of the liability.

25. **Schedule H (Form 990). Hospitals.**

Complete one Schedule H for all of the hospitals operated by subordinates in the group, and report aggregate data from all the hospitals. In Part V, Section A, list each of the organization's **hospital facilities** separately. List in Section A the name and EIN of the subordinate hospital organization that operates the hospital facility. Complete separate Sections B and C for each of the hospital facilities or facility reporting groups listed in Section A.

26. **Schedule J (Form 990).
Compensation from related**

organizations. See the Part VII instructions, earlier, in this Appendix.

27. **Schedule L (Form 990).**
Transactions with interested persons. On Schedule L (Form 990), Part IV, report only transactions between a subordinate organization and its interested persons—not transactions between a subordinate organization and the interested persons of other subordinates. In determining whether a transaction between the subordinate and its interested persons meets the financial reporting thresholds of Schedule L, Part IV, consider only the payments between the subordinate and its interested persons, not payments between interested persons and the parent or other subordinates.
28. **Schedule N (Form 990).**
Liquidation or significant

disposition of assets. Explain on Schedule N (Form 990), Part III, which of the subordinates have undergone a liquidation, termination, dissolution, or significant disposition of assets during the tax year.

29. **Schedule R (Form 990). Related organizations.** See the Instructions for Schedule R (Form 990) to determine when related organizations of a member of a group exemption must be included on Schedule R (Form 990). In general, **central organizations** and **subordinate organizations** of a **group exemption** aren't required to be listed as **related organizations** on Schedule R (Form 990), Part II; and all other related organizations of the central organization or of a subordinate organization are required to be listed on Schedule R (Form 990)

in the applicable part. Even if a related organization isn't required to be listed in Part II of Schedule R (Form 990), the organization must report its transactions with the related organization in Part V, as described in the instructions for that Part.

Appendix F. Disregarded Entities and Joint Ventures—Inclusion of Activities and Items

Disregarded Entities

A **disregarded entity**, as described in Regulations sections 301.7701-1 through -3, is generally treated as a branch or division of its parent organization for federal tax purposes (but see the *Tip* next for the treatment of disregarded entities as separate entities for employment tax purposes). Therefore, financial and other information applicable to a disregarded entity must be reported as the parent organization's

information, except on Form 990, Part VI, lines 10a and 10b, and on Schedule R (Form 990), in which disregarded entities must be separately reported.

An organization must report on its Form 990, including Parts VIII through X, all of the revenues, expenses, assets, liabilities, and net assets or funds of a disregarded entity of which it is the sole member. The disregarded entity is deemed to have the same accounting period as its parent for federal tax purposes. The organization must also report the activities of a disregarded entity in the appropriate parts (including schedules) of the Form 990. For example, support of a disregarded entity must be taken into account by the filing organization for purposes of the public support tests set forth on Schedule A (Form 990). Similarly, **political campaign activity** or **lobbying activity** conducted by a disregarded entity of which the organization is

the sole member must be reported on Schedule C (Form 990).

Tip: A disregarded entity is treated as a separate entity for purposes of employment tax and certain excise taxes. For wages paid after January 1, 2009, a disregarded entity is required to use its name and EIN for reporting and payment of employment taxes.

Caution: A single-member LLC is treated generally as a disregarded entity of its sole member/owner unless it elects to be treated as a separate association. It may elect to be treated separately by filing Form 8832, Entity Classification Election, or by claiming tax-exempt status in its own right (by filing a Form 1023, 1023-EZ, 1024, or 1024-A, application for recognition of tax-exempt status, or a Form 990, 990-EZ, 990-N, or 990-T, using its own name and EIN). Once the IRS determines a single-member LLC to be exempt, it is no longer eligible to be treated as a disregarded entity until the

determination of exemption is revoked and the LLC subsequently files a Form 8832 electing disregarded entity status. Similarly, a single-member LLC that claims exemption but hasn't been determined to be exempt isn't eligible to be treated as disregarded until the claim is withdrawn or rejected and the LLC files a Form 8832 electing disregarded entity status. See Regulations section 301.7701-3(c)(1)(v)(A).

The following is a list of special instructions for the form and schedules regarding the reporting of a disregarded entity of which the organization is the sole member. These items are described to illustrate special applications of the rule described above that a disregarded entity's activities and items must be reported on the organization's Form 990 and applicable schedules.

1. **Part I, line 5. Number of employees.** See the instructions for Part V, lines 1 and 2, below.

2. **Part I, line 6. Number of volunteers.** The total number of **volunteers** to be reported can, but isn't required to, include **volunteers** of any disregarded entity.
3. **Part III. Program service accomplishments.** Consider activities and accomplishments of all disregarded entities when answering this part.
4. **Part IV, line 12. Audited financial statements.** The organization shouldn't answer "Yes" to this question merely because it received audited financial statements of one or more disregarded entities, if the audited financial statements of the organization weren't audited.
5. **Part IV, lines 31–32. Liquidation or significant disposition of assets.** See the instructions for Schedule N (Form 990) in this Appendix, later.

6. **Part IV, lines 35–36. Transactions with related organizations.** See the instructions for Schedule R (Form 990) in this Appendix, later.
7. **Part V, lines 1–2. Forms 1096 and W-3.** The total number of information returns and **employees** to be reported, and compliance with backup withholding rules, includes all backup withholding, information returns, and employees of any disregarded entity, whether or not the disregarded entity has a separate **EIN** for employment tax and information reporting purposes.
8. **Part V, line 7. Organizations that can receive deductible contributions.** For purposes of Form 990 reporting, lines 7a through 7h are to be answered by taking into account any contributions made to a disregarded entity.

9. **Part VI, lines 1a–9.** Members of the governing body, officers, directors, trustees, and employees of a disregarded entity won't be treated as **governing body members, officers, directors, or trustees** of the filing organization, but a person can be a **key employee** or **highest compensated employee** of the filing organization by virtue of **compensation** paid by the disregarded entity, or the person's responsibilities and authority over operations of the disregarded entity when compared to the filing organization as a whole. See *Disregarded entities* under *Part VII, Section A*, earlier.
10. **Part VI, Section B, lines 10a– 16b. Policies.** The organization should check "Yes" or "No" based on the filing organization's policies, but for each

“Yes” response, they must report on Schedule O (Form 990) whether the policy applies to all of the organization’s disregarded entities (if any).

11. **Part VII, line 1a. Definitions of key employee and highest compensated employee.** An officer, director, trustee, and employee of a disregarded entity can constitute a key employee or highest compensated employee of the filing organization by virtue of compensation paid by the disregarded entity, or the person’s responsibilities and authority over operations of the disregarded entity when compared to the filing organization as a whole. See the instructions for Form 990, Part VII, Section A.
12. **Part XII, lines 2a–2b. Financial statements.** If the organization

included financial information from its disregarded entity or entities in its financial statements, but didn't consolidate any other entity's information in its financial statements, it should check the box for "Separate basis" but not the box for "Consolidated basis" or "Both consolidated and separate basis."

13. **Part XII, line 3. Uniform Guidance, 2 CFR Part 200, Subpart F.** The organization must check "Yes" if a disregarded entity was required to undergo an audit or audits.

Note: The Single Audit Act of 1984 and OMB Circular A-133 are superseded by Uniform Guidance, 2 CFR Part 200, Subpart F, and now requires states, local governments, and nonprofit organizations that spend \$750,000 (previously \$500,000) or

more of federal awards in a year to obtain an annual audit.

14. **Schedule L (Form 990).**
Transactions with interested persons. Reportable transactions include transactions involving interested persons who have such status because of their relationship with a disregarded entity (such as an employee of the disregarded entity who qualifies as a key employee of the organization as a whole). A transaction between an interested person and a disregarded entity of the organization is reportable on Schedule L.
15. **Schedule N (Form 990).**
Liquidation or significant disposition of assets. The organization shouldn't prepare Part I to report a termination, liquidation, or dissolution of a disregarded entity if the filing organization continues to

operate. Transfers to (or by) a filing organization by (or to) its disregarded entity aren't to be reported in Part II, but transfers by or contractions of a disregarded entity are to be taken into account to determine whether a reportable event (based on 25% of the filing organization's net assets, including those of its disregarded entities) has occurred.

16. **Schedule R (Form 990), Part V, line 2. Transactions with related organizations.** Specified payments to a disregarded entity by a **controlled entity** of the filing organization, and transfers by a disregarded entity to an exempt noncharitable entity, are to be reported on Schedule R (Form 990), Part V, line 2.

Joint Ventures Treated as a Partnership for Federal Income Tax Purposes

If the organization participates as a partner or member of a **joint venture**, partnership, LLC, or other entity treated as a partnership for federal tax purposes (referred to here as a “joint venture”), as described in Regulations sections 301.7701-1 through -3, then the organization in general must report the activities of the joint venture as its own activities, and report the joint venture’s revenue, expenses, and assets, to the extent of the organization’s proportionate interest in the joint venture. For example, a proportionate share of the **political campaign activity** or **lobbying activity** conducted by a joint venture of which the organization is a member must be reported on Schedule C (Form 990). If the joint venture is a member of a second joint venture, which is a member of a third joint

venture, etc., the activities similarly pass through all joint ventures to the organization, according to the organization's proportionate share in each of the joint ventures.

The following is a list of special instructions for the form and schedules regarding the reporting of a joint venture of which the organization is a member.

1. **Part I, line 2. Disposition of 25% of assets.** See the instructions for Schedule N in this Appendix, later.
2. **Part I, lines 7a–7b. Unrelated business income.** Include the organization's distributive share (whether or not distributed) of income or loss of the joint venture that is unrelated business income in determining the organization's gross and net unrelated business income.
3. **Part IV, lines 3–5. Political campaign and lobbying activities.**

See the instructions for Schedule C in this Appendix, later.

4. **Part IV, line 7. Conservation easements.** See the instructions for Schedule D in this Appendix, later.
5. **Part IV, lines 14–16. Activities outside the United States.** See the instructions for Schedule F in this Appendix, later.
6. **Part IV, lines 17–19. Fundraising and gaming.** See the instructions for Schedule G in this Appendix, later.
7. **Part IV, line 20. Hospitals.** See the instructions for Schedule H in this Appendix, later.
8. **Part IV, lines 21–22. Grants in the United States.** See the instructions for Schedule I in this Appendix, later.
9. **Part IV, lines 26–28. Loans, grants, and business transactions**

involving interested persons. See the instructions for Schedule L in this Appendix, later.

10. **Part IV, line 32. Disposition of 25% of assets.** See the instructions for Schedule N in this Appendix, later.
11. **Part IV, lines 34–37. Related organizations and unrelated partnerships.** See the instructions for Schedule R in this Appendix, later.
12. **Part V, line 3a. Unrelated business income.** Include the organization's distributive share (whether or not distributed) of income or loss of the joint venture that is **unrelated business income** in determining the organization's gross unrelated business income.
13. **Part VI. Governance, management, and disclosure.** Don't take into

account a joint venture for purposes of Part VI (except for lines 16a and 16b).

14. **Part VII. Compensation.** See the instructions for Schedule J in this Appendix, later.
15. **Parts VIII, IX, and X. Financial statements.** Report in accordance with the organization's books and records.
16. **Part XII. Financial statements and reporting.** Disregard a joint venture.
17. **Schedule C (Form 990). Political campaign and lobbying activities.** Report the organization's share of political campaign or lobbying activities conducted by a joint venture.
18. **Schedule D (Form 990), Part II. Conservation easements.** Include conservation easements held by a joint venture formed for the purpose of holding the easements.

19. **Schedule F (Form 990). Activities outside the United States.** Include activities of a joint venture, including grants to organizations or individuals outside the United States.
20. **Schedule G (Form 990). Fundraising and gaming.** Include activities of a joint venture and the organization's share of revenues and expenses. On Part III, line 12, check "Yes" if the joint venture was formed to administer charitable gaming.
21. **Schedule H (Form 990). Hospitals.** Report activities, expenses, and revenue of **hospital facilities** and other programs operated by any joint venture, to the extent of the organization's proportionate interest in the joint venture. See the instructions for Schedule H, Part IV, to determine how to report an organization's

interest in joint ventures and management companies.

22. **Schedule I (Form 990). Grants in the United States.** Include grants from a joint venture to organizations, governments, or individuals in the United States.
23. **Schedule J (Form 990). Compensation.** If an **officer, director, trustee, or employee** of the organization receives compensation from a joint venture, the **compensation** isn't treated as paid pro rata by the organization. The compensation may need to be reported, however, as compensation from a related organization if the joint venture is a related organization.
24. **Schedule K (Form 990), Part III, line 1. Private business use.** Report certain joint ventures that owned

property financed by **tax-exempt bonds**.

25. **Schedule L (Form 990), Parts II–IV. Loans, grants, and business transactions involving interested persons.** Report loans, grants, and business transactions between the organization and a joint venture, if the joint venture is an interested person for purposes of Schedule L, and if the transaction meets the applicable reporting thresholds described in the Schedule L instructions. Also report certain joint ventures with interested persons as provided in the Schedule L, Part IV, instructions as business transactions themselves.
26. **Schedule N (Form 990), Part II. Disposition of 25% of assets.** In determining whether the organization made a disposition of more than 25% of its assets, take into account its

share of dispositions by a joint venture.

27. **Schedule R (Form 990). Related organizations.** Report relationships with certain joint ventures in Parts III and VI, and certain transactions with joint ventures in Part V.

Appendix G. Section 4958 Excess Benefit Transactions

The intermediate sanction regulations are important to the exempt organization community as a whole, and for ensuring compliance in this area. The rules provide a roadmap by which an organization can steer clear of situations that may give rise to inurement.

Under section 4958, any **disqualified person** who benefits from an **excess benefit transaction** with an **applicable tax-exempt organization** is liable for a 25% tax on the excess benefit. The disqualified person is also

liable for a 200% tax on the excess benefit if the excess benefit isn't corrected by a certain date. Also, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause are liable for a 10% tax on the excess benefit, not to exceed \$20,000 for all participating managers on each transaction.

Applicable Tax-Exempt Organization

These rules only apply to certain applicable section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. An **applicable tax-exempt organization** is a section 501(c)(3), 501(c)(4), or 501(c)(29) organization that is tax exempt under section 501(a), or was an organization at any time during a 5-year period ending on the day of the **excess benefit transaction**.

An **applicable tax-exempt organization** doesn't include:

- A **private foundation**, as defined in section 509(a);
- A governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a) or relieved from filing an annual return under Regulations section 1.6033-2(g)(6); and
- Certain **foreign organizations**.

An organization isn't treated as a section 501(c)(3), 501(c)(4), or 501(c)(29) organization for any period covered by a final determination that the organization wasn't tax exempt under section 501(a), so long as the determination wasn't based on private inurement or one or more excess benefit transactions.

Disqualified Person

Most section 501(c)(3), 501(c)(4), or 501(c)(29) organization **employees** and

independent contractors won't be affected by these rules. Only the few influential persons within these organizations are covered by these rules when they receive benefits, such as **compensation**, fringe benefits, or contract payments. The IRS calls this class of covered individuals **disqualified persons**.

A disqualified person, regarding any transaction, is any person who was in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during a 5-year period ending on the date of the transaction. Persons who hold certain powers, responsibilities, or interests are among those who are in a position to exercise substantial influence over the affairs of the organization. This would include, for example, **voting members of the governing body**, and persons holding the power of the following.

- Presidents, **CEOs**, or chief operating officers.
- Treasurers and chief financial officers. A disqualified person also includes certain family members of a disqualified person, and **35% controlled entities** of a disqualified person.

The following persons are considered disqualified persons for the following organizations, along with certain family members and 35% controlled entities associated with them.

- For a transaction involving a **donor advised fund**, a donor or **donor advisor** of that donor advised fund.
- For a **donor advised fund** sponsoring organization, an investment advisor of the **sponsoring organization**.
- For a **supported organization** of a section 509(a)(3) supporting

organization, the disqualified persons of the section 509(a)(3) **supporting organization**.

See the instructions for Form 4720, Schedule I, for more information regarding these disqualified persons.

Who isn't a disqualified person? The rules also clarify which persons aren't considered to be in a position to exercise substantial influence over the affairs of an organization. They include:

- An employee who receives benefits
- that total less than the highly compensated amount (see below) and who doesn't hold the executive or voting powers just mentioned, isn't a family member of a disqualified person, and isn't a substantial contributor;

- Tax-exempt organizations described in section 501(c)(3); and
- Section 501(c)(4) organizations for transactions engaged in with other section 501(c)(4) organizations.

Highly Compensated Employee Benefits—Limitation Amounts	
Year	Limitation amount
2015 through 2018	\$120,000
2019	\$125,000
2020 through 2021	\$130,000
2022	\$135,000
2023	\$150,000

2024	\$155,000
2025	\$160,000

Who else can be considered a disqualified person? Other persons not described above can also be considered disqualified persons, depending on all the relevant facts and circumstances.

Facts and circumstances tending to show substantial influence.

- The person founded the organization.
- The person is a substantial contributor to the organization under the section 507(d)(2)(A) definition, only taking into account contributions to the organization for the past 5 years.
- The person's compensation is primarily based on revenues derived from the activities of the organization that the person controls.

- The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees.
- The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole.
- The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person.
- The person is a nonstock organization controlled directly or indirectly by one or more disqualified persons.

Facts and circumstances tending to show no substantial influence.

- The person is an independent contractor whose sole relationship to the organization is providing professional advice (without having decision-making authority) for transactions from which the independent contractor won't economically benefit.
- The person has taken a vow of poverty.
- Any preferential treatment the person receives based on the size of the person's donation is also offered to others making comparable widely solicited donations.
- The direct supervisor of the person isn't a disqualified person.
- The person doesn't participate in any management decisions affecting the organization as a whole or a discrete segment of the organization that

represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole.

What about persons who staff affiliated organizations? In the case of multiple affiliated organizations, the determination of whether a person has substantial influence is made separately for each applicable tax-exempt organization. A person may be a disqualified person for more than one organization in the same transaction.

Excess Benefit Transaction

An **excess benefit transaction** is generally a transaction in which an economic benefit is provided by an **applicable tax-exempt organization**, directly or indirectly, to or for the use of any **disqualified person**, and the value of the economic benefit provided by the applicable tax-exempt organization exceeds the value of the consideration (including the

performance of services) received for providing the benefit, but see the special rules below for **donor advised funds** and **supporting organizations**. An excess benefit transaction can also occur when a disqualified person embezzles from the exempt organization.

To determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization, and all entities it controls, are taken into account.

For purposes of determining the value of economic benefits, the value of property, including the right to use property, is the **FMV**. **FMV** is the price at which property, or the right to use property, would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell, or transfer property or the right to

use property, and both having reasonable knowledge of relevant facts.

Donor advised funds. For a **donor advised fund**, an excess benefit transaction includes a grant, a loan, **compensation**, or similar payment from the fund to a:

- Donor or donor advisor,
- Family member of a donor or donor advisor,
- 35% controlled entity of a donor or donor advisor, or
- 35% controlled entity of a family member of a donor or donor advisor.

For these transactions, the excess benefit is defined as the amount of the grant, loan, compensation, or similar payment. For additional information, see the Instructions for Form 4720.

Supporting organizations. For any supporting organization defined in section

509(a)(3), an excess benefit transaction includes grants, loans, compensation, or similar payment provided by the supporting organization to a:

- Substantial contributor,
- Family member of a substantial contributor,
- 35% controlled entity of a substantial contributor, or
- 35% controlled entity of a family member of a substantial contributor. Additionally, an excess benefit transaction includes any loans provided by the supporting organization to a disqualified person (other than an organization described in section 509(a) (1), (2), or (4)).

A substantial contributor is any person who contributed or bequeathed an aggregate of more than \$5,000 to the organization, if that amount is more than 2% of the total

contributions and bequests received by the organization before the end of the tax year of the organization in which the contribution or bequest is received by the organization from the person. A substantial contributor includes the grantor of a trust.

The excess benefit for substantial contributors and parties related to those contributors includes the amount of the grant, loan, compensation, or similar payment. For additional information, see the Instructions for Form 4720.

When does an excess benefit transaction usually occur? For federal income tax purposes, an excess benefit transaction occurs on the date the disqualified person receives the economic benefit from the organization. However, when a single contractual arrangement provides for a series of compensation payments or other payments to a disqualified person during the disqualified person's tax year, any excess benefit

transaction for these payments occurs on the last day of the disqualified person's tax year.

In the case of the transfer of property subject to a substantial risk of forfeiture, or in the case of rights to future compensation or property, the transaction occurs on the date the property, or the rights to future compensation or property, isn't subject to a substantial risk of forfeiture. Where the disqualified person elects to include an amount in gross income in the tax year of transfer under section 83(b), the excess benefit transaction occurs on the date the disqualified person receives the economic benefit for federal income tax purposes.

Section 4958 applies only to post-September 1995 transactions. Section 4958 applies the general rules to excess benefit transactions occurring on or after September 14, 1995. Section 4958 doesn't apply to any transaction occurring pursuant to a written contract that was binding on

September 13, 1995, and at all times thereafter before the transaction occurs. The special rules relevant to transactions with donor advised funds and supporting organizations apply to transactions occurring after August 17, 2006, except that taxes on certain transactions between supporting organizations and their substantial contributors apply to transactions occurring on or after July 25, 2006.

What Is Reasonable Compensation?

Reasonable compensation is the valuation standard that is used to determine if there is an excess benefit in the exchange of a **disqualified person's** services for **compensation**. Reasonable compensation is the value that would ordinarily be paid for like services by like enterprises under like circumstances. This is the section 162 standard that will apply in determining the reasonableness of compensation. The fact

that a bonus or revenue-sharing arrangement is subject to a cap is a relevant factor in determining the reasonableness of compensation.

For determining the reasonableness of compensation, all items of compensation provided by an applicable tax-exempt organization in exchange for the performance of services are taken into account in determining the value of compensation (except for certain economic benefits that are disregarded, as discussed in *What benefits are disregarded?* in this Appendix, later). Items of compensation include the following.

- All forms of cash and noncash compensation, including salary, fees, bonuses, severance payments, and deferred and noncash compensation.
- The payment of liability insurance premiums for, or the payment or reimbursement by the organization of, taxes or certain expenses under

section 4958, unless excludable from income as a de minimis fringe benefit under section 132(a)(4). (A similar rule applies in the private foundation area.) Inclusion in compensation for purposes of determining reasonableness under section 4958 doesn't control inclusion in income for income tax purposes.

- All other compensatory benefits, whether or not included in gross income for income tax purposes.
- Taxable and nontaxable fringe benefits, except fringe benefits described in section 132.
- Foregone interest on loans.

Written intent required to treat benefits as compensation. An economic benefit isn't treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat

the benefit as compensation when the benefit is paid.

An applicable tax-exempt organization (or entity that it controls) is treated as clearly indicating its intent to provide an economic benefit as compensation for services only if the organization provides written substantiation that is contemporaneous with the transfer of the economic benefits under consideration. Ways to provide contemporaneous written substantiation of its intent to provide an economic benefit as compensation include the following.

- The organization produces a signed written employment contract.
- The organization reports the benefit as compensation on an original Form W-2, Form 1099, or Form 990, or on an amended form filed before the start of an IRS examination.

- The disqualified person reports the benefit as income on the person's original Form 1040 or 1040-SR or on an amended form filed before the start of an IRS examination.

Exception. To the extent the economic benefit is excluded from the disqualified person's gross income for income tax purposes, the applicable tax-exempt organization isn't required to indicate its intent to provide an economic benefit as compensation for services, for example, employer-provided health benefits and contributions to qualified plans under section 401(a).

What benefits are disregarded? The following economic benefits are disregarded for purposes of section 4958.

- Nontaxable fringe benefits. An economic benefit that is excluded from income under section 132.

- Benefits to volunteers. An economic benefit provided to a volunteer for the organization if the benefit is provided to the general public in exchange for a membership fee or contribution of \$75 or less per year.
- Benefits to members or donors. An economic benefit provided to a member of an organization due to the payment of a membership fee, or to a donor as a result of a deductible contribution, if a significant number of nondisqualified persons make similar payments or contributions and are offered a similar economic benefit.
- Benefits to a charitable beneficiary. An economic benefit provided to a person solely as a member of a charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of its exempt purpose.

- Benefits to a governmental unit. A transfer of an economic benefit to or for the use of a governmental unit, as defined in section 170(c)(1), if exclusively for public purposes.

Is there an exception for initial contracts? Section 4958 doesn't apply to any fixed payment made to a person pursuant to an **initial contract**. This is a very important exception because it would potentially apply, for example, to all initial contracts with new, previously unrelated officers and contractors.

An initial contract is a binding written contract between an applicable tax-exempt organization and a person who wasn't a disqualified person immediately before entering into the contract.

A fixed payment is an amount of cash or other property specified in the contract, or determined by a fixed formula that is specified in the contract, which is to be paid

or transferred in exchange for the provision of specified services or property.

A fixed formula can, in general, incorporate an amount that depends upon future specified events or contingencies, as long as no one has discretion when calculating the amount of a payment or deciding whether to make a payment (such as a bonus).

Treatment as new contract. A binding written contract, providing that it can be terminated or canceled by the applicable tax-exempt organization without the other party's consent (except as a result of substantial nonperformance) and without substantial penalty, is treated as a new contract, as of the earliest date that any termination or cancellation would be effective. Also, a contract in which there is a material change, which includes an extension or renewal of the contract (except for an extension or renewal resulting from the exercise of an option by the disqualified person), or a more than

incidental change to the amount payable under the contract, is treated as a new contract as of the effective date of the material change. Treatment as a new contract can cause the contract to fall outside the initial contract exception, and it would thus be tested under the FMV standards of section 4958.

Rebuttable Presumption of Reasonableness

Payments under a **compensation** arrangement are presumed to be reasonable and the transfer of property (or right to use property) is presumed to be at **FMV** if the following three conditions are met.

1. The transaction is approved by an authorized body of the organization (or an entity it controls), which is composed of individuals who don't have a conflict of interest concerning the transaction.

2. Before making its determination, the authorized body obtained and relied upon appropriate data as to comparability. There is a special safe harbor for small organizations. If the organization has gross receipts of less than \$1 million, appropriate comparability data include data on compensation paid by three comparable organizations in the same or similar communities for similar services.
3. The authorized body adequately documents the basis for its determination concurrently with making that determination. The documentation should include:
 - a. The terms of the approved transaction and the date approved;
 - b. The members of the authorized body who were present during debate on the transaction that was

approved and those who voted on it;

- c. The comparability data obtained and relied upon by the authorized body and how the data was obtained;
- d. Any actions by a member of the authorized body having a conflict of interest; and
- e. Documentation of the basis for the determination before the later of the next meeting of the authorized body or 60 days after the final actions of the authorized body are taken, and approval of records as reasonable, accurate, and complete within a reasonable time thereafter.

Special rebuttable presumption rule for nonfixed payments. As a general rule, in the case of a nonfixed payment, no rebuttable

presumption arises until the exact amount of the payment is determined, or a fixed formula for calculating the payment is specified, and the three requirements creating the presumption have been satisfied. However, if the authorized body approves an employment contract with a disqualified person that includes a nonfixed payment (for example, discretionary bonus) with a specified cap on the amount, the authorized body can establish a rebuttable presumption as to the nonfixed payment when the employment contract is entered into by, in effect, assuming that the maximum amount payable under the contract will be paid, and satisfying the requirements giving rise to the rebuttable presumption for that maximum amount.

An IRS challenge to the presumption of reasonableness. The IRS can refute the presumption of reasonableness only if it develops sufficient contrary evidence to rebut the probative value of the comparability data

relied upon by the authorized body. This provision gives taxpayers added protection if they faithfully find and use contemporaneous persuasive comparability data when they provide the benefits.

Organizations that don't establish a presumption of reasonableness. An organization can still comply with section 4958 even if it didn't establish a presumption of reasonableness. In some cases, an organization may find it impossible or impracticable to fully implement each step of the rebuttable presumption process. In those cases, the organization should try to implement as many steps as possible, in whole or in part, in order to substantiate the reasonableness of benefits as timely and as well as possible. If an organization doesn't satisfy the requirements of the rebuttable presumption of reasonableness, a facts and circumstances approach will be followed, using established rules for determining

reasonableness of compensation and benefit deductions in a manner similar to the established procedures for section 162 business expenses.

Section 4958 Taxes

Tax on disqualified persons. An excise tax equal to 25% of the excess benefit is imposed on each excess benefit transaction between an **applicable tax-exempt organization** and a **disqualified person**. The disqualified person who benefited from the transaction is liable for the tax. If the 25% tax is imposed and the excess benefit transaction isn't corrected within the tax period, an additional excise tax equal to 200% of the excess benefit is imposed.

If a disqualified person makes a payment of less than the full correction amount, the 200% tax is imposed only on the unpaid portion of the correction amount. If more than one disqualified person received an

excess benefit from an excess benefit transaction, all the disqualified persons are jointly and severally liable for the taxes.

To avoid the imposition of the 200% tax, a disqualified person must correct the excess benefit transaction during the tax period. The tax period begins on the date the transaction occurs and ends on the earlier of the date the statutory notice of deficiency is issued or the section 4958 taxes are assessed. This 200% tax can be abated if the excess benefit transaction is subsequently corrected during a 90-day correction period.