

Form 990, 2006
Deconstruction of Lines 75b and 75c

1.1, June 5, 2007

Background

- Line 75b is asking about relationships among the organization's fiduciaries and highly compensated employees and contractors.
- Line 75c is asking about certain people earning \$50K or more in aggregate from "related" organizations and can be seen as more intrusive than necessary.
- The information can be hard to collect, and to add to the confusion, the IRS has modified the instructions with a published Q&A, online at IRS.gov, which is NOT referenced in the instructions themselves. (The document is entitled "2006 Form 990 Qs & As" and is pretty easy to find on IRS.gov/charities. I also attach it here and reference it in the text when it is applicable.)

The questions, verbatim

"75b Are any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, related to each other through ***family or business relationships***? If "Yes" attach a statement that identifies the individuals and explains the relationship(s)."

"75c Do any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, receive compensation from any other organizations, whether tax exempt or taxable, that are ***related to the organization***? See the instructions for the definition of "related organization.""

The problem(s)

There are four serious difficulties in preparing a complete and accurate Form 990:

- I) compiling a complete List of Persons for these two questions, and then
- II) identifying relationships among the Listed Persons, and
- III) determining the List of Related Organizations, and then
- IV) determining the aggregate compensation from the reporting organization and any Listed Related Organizations paid to anyone on the Listed Persons list.

I. Compiling the List of Persons. (The good or bad news is that these are all reported on 990 Part V-A, or Schedule A Parts I, II-A and II-B in a proper 990. Because there are many errors just in doing those schedules, I will review definitions here. Only 501(c)(3)'s are required to file Schedule A, so the list is easier for other 501(c) reporting organizations.)

1. Definitions of persons to be listed in Form 990, Part V-A:

A. “directors, trustees”

These mean the same thing – “board members” who served at any time during the year (from the question in Part V-A).

B. “officers”

The organization’s Bylaws determine who is an officer. In the nonprofit world these are often misunderstood as “board officers.” They are corporate officers, and may or may not be also on the board depending on state law and the bylaws.¹ The list includes anyone who served as an Officer at any time during the year.

C. “key employees”

This is a little less well-defined (Instructions page 34):

“A key employee is any person having responsibilities, powers, or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization (such as an executive director or chancellor). A chief financial officer and the officer in charge of the administration or program operations are both key employees if they have the authority to control the organization’s activities, its finances, or both.”

Therefore, key employee(s) definitely includes the Executive Director / CEO, and you should consider the most senior financial person and any deputy director, COO, Executive VP and the like. It does not mean department or program heads; this was clearer in the 2004 instructions, and IRS inexplicably dropped some of the explanation in 2005 and going forward.² If a management services firm or other entity is being paid for services of a key employee, the list (and 990) should name the person, not the management services firm. The list should be for all key employees who held their position during any part of the year.

That completes Part V-A, the first part of the list. Three additional notes:

- Note 1: In completing Part V-A, you should *read the instructions to understand the columns of reportable compensation*, and if no compensation was paid, write “0” or “none.” IRS has said publicly that they consider blanks to be non-answers, not zeroes.
- Note 2: Form 990 Line 25a reports *aggregate W-2 compensation and nontaxable fringe for these persons* (their benefits are not to be combined with the rest of the staff on Line 28). In most cases (barring complex deferred compensation arrangements), Part V-A total compensation + benefits will tie to Line 25a.
- Note 3: IRS has amended the instructions via the Q&A so that *schedules for Lines 25a,b,c are not required*.

2. Definitions of Persons to be Listed in Schedule A Parts I, II-A and II-B. (If the overall return is being prepared on accrual basis, so should all of these amounts.)

A. Part I: Highly compensated non-key employees. These are staff earning \$50K or more in combined payroll and benefits, (common error is to count only W-2 payroll).

¹ Most states stipulate that there shall be at least three officers, and it is not uncommon for there to be prohibitions on one person holding the office of President or Chair as well as Secretary or Treasurer. So, in a given situation, there may be as few as two officers, a President and a person who is both Secretary and Treasurer, or there may be several officers including vice presidents and assistant Secretaries and Treasurers. The Executive Director may be defined in the bylaws as an officer and may or may not be on the board.

² Word on “the street” is that there is a battle between the “keep it short and simple” editors and the technical compliance folks within the service.

B. Part II-A: Highly compensated Professional Service contractors (lawyers, accountants, auditors, health care professionals, investment advisors, and professional fundraisers; possibly others such as architects, physicians) being paid \$50K or more (accrual basis) during the year.

C. Part II-B, Highly compensated non-professional-service contractors (parking lot maintenance, maintenance of IT/buildings etc, possibly web designers, graphic designers) being paid \$50K or more (accrual basis) during the year.

These three Parts of Schedule A comprise the second part of the Listed Persons.

II) Identifying relationships among the Listed Persons (Line 75b)

The instructions for Line 75b refer to the instructions for Line 51 (Other Notes and Loans Receivable) for definitions of Family and Business relationships. And also be aware that if there are any loans receivable to anyone who sits in such a relationship to any person on the List above, there are special reporting requirements for that Note (it is generally not good practice for charities to be loaning money to anyone).

The Line 51 definitions are:

Family relationships include an individual's spouse, ancestor, children, grandchildren, great-grandchildren, siblings (whether by whole or half-blood), and the spouses of children, grandchildren, great-grandchildren, and siblings.

Business relationships are employment and contractual relationships, and common ownership of a business where any officers, directors, or trustees, individually or together, possess more than a 35% ownership interest in common. Ownership is voting owner in a corporation, profits interest in a partnership, or beneficial interest in a trust.

Questionnaire to Listed Persons. One approach is to provide each Person on the List the complete List, and a questionnaire that asks them to report and describe as below. The questionnaire should require the name and title, date, and signature of each person reporting this information.^{3 4}

³ The IRS has suggested this approach in its Q&A, and provided a bit of reassurance about inaccuracies if a “*reasonable effort*” is made:

7) Q: What should I do if I am unable to obtain information required for the attached schedule about the business relationships among individuals listed in Form 990 Part VA, Schedule A Part I and Schedule A Parts II-A and II-B?

A: The organization is not required to provide information about such business relationships if it is *unable to secure the information after making a reasonable effort* to obtain the information.

An example of a reasonable effort would be for the Form 990 preparer or an officer eligible to sign the Form 990 to distribute a questionnaire annually to each officer, director, trustee, and key employee listed in Part V-A; each highest compensated employee listed in Schedule A, Part I; and each highest compensated professional and other independent contractor listed in Schedule A, Parts II-A and II-B. The questionnaire should require the name and title, date, and signature of each person reporting this information. The questionnaire should contain the family and business definitions set out in the instructions for Line 51.

⁴ I have spoken to a number of people about finding a way to mix this questionnaire with the necessary annual disclosure statement of conflicts under most conflict-of-interest policies; this would reduce the burden and annoyance for directors and officers who may quit in the face of these intrusions in any case.

I have received mixed responses to this idea, but I continue to think that a single questionnaire instrument is the answer. Two problems are to simplify it enough so the responses are accurate, and arrange for someone internally, pre-CPA, to evaluate the information and decide what really needs reporting – for one simple example, the persons covered under the conflict of interest policy may be different than the ones Listed for use in Lines 75b and 75c, so the annual reporting of conflicts in the minutes may not be as extensive as the relationships disclosed on the 990.

“For our tax reporting, we need to report any relationships among our board, officers, key employees, and highly compensated other employees and contractors.

Please review the attached list of people, and take a moment and tell us the details, as soon as possible, (our tax reporting cannot move forward until we have these answers) if anyone else on this list is:

- Your spouse?
- Your ancestor?
- Your descendant?
- Your sibling or half-sibling?
- The spouse of your descendant or your full-or half-sibling?
- Someone you directly work for or directly works for you (in other words not for a corporation that one of you owns or works for in any position)⁵ as an employee or contractor?
- Someone you co-own cumulatively 35% or more of a business with?

If you have any concerns about our use of this information, please discuss it with _____.”

This questionnaire to the listed persons will need to come, of course, after the work has been done to figure out who they are.

III) Determining the List of Related Organizations

This is where we really enter the twilight zone unfortunately: The IRS, channeling Franz Kafka, wants different disclosures depending on the type of relationship, counting exceptions, and so the instructions:

- spell out 8 types of relationship,
- 3 special definitions (one of affects a type, and was mooted by the Q&A)
- 3 exceptions, and give
- 6 applied examples,

and then the Supplemental Q&A (which only those paying close attention even know about):
retracts 2 of the 8 types, leaving 6 types to evaluate,
modifies the required disclosures,
illuminates one exception, and
clarifies one of the types.

⁵ This is my interpretation of one of the Q&A items I do not understand fully. Here it is in its entirety:

6) Q: Does a business relationship exist between two directors of the filing organization where one director does business with the wholly owned corporation of another director?

A: Business relationships are employment relationships, contractual relationships, and common ownership of a business in excess of 35%. As the instructions specify no rules for corporate attribution, only direct relationships must be reported (e.g., one director is employed by another in a sole proprietorship or partnership, or one director serves the other as attorney or accountant in a sole proprietorship or partnership).

Overview	
	<p>Only answer "yes" to 7c if the Listed Person is receiving \$50K or more from the reporting organization and all related organizations. Otherwise, does not matter.</p> <ol style="list-style-type: none"> 1. Start by identifying "related" organizations. 2. Then see if any compensation needs to be reported. 3. Note that you may assume that expense reimbursements under an accountable plan do not count as compensation (accountable plan: reasonable, actual, based on receipts, required for the benefit of the reporting organization; for more info see IRS Pub 15).
Relationship	<i>(Determining the List of Related Organizations)</i>
1	Any organization that controls or is controlled by the reporting organization (control: >50% voting power or power to approve budgets or expenditures, directly or through another organization).
2	If reporting organization is controlled, any organization also controlled by the same person (legally a "person" can be a corporation or a human being). Exception if that person is a financial institution trustee. (Same definition of control as above). Note: if an individual controls the reporting organization, see the "volunteer" exception in the instructions (too complex to summarize; also Q&A #10).
3	Any 509(a)(3) Supporting Organizations to or Supported Organizations by the reporting organization. (Note that this can be quite complex in some supporting organizations where a "class" of supported organizations is included.)
4	Any organization sharing a "common paymaster" with the reporting organization (this is possible in a large complex C3/C4 tandem for example, or linked hospital organizations). "Common Paymaster" is a term of art in the Regs.
5	Any organization that pays compensation to a Listed person whom the reporting organization would otherwise have to pay.
6	rescinded by Q&A (<i>partners & joint venturers</i>)
7	Any organization with whom the reporting organization conducts joint programs or shares facilities or employees.
8	rescinded by Q&A (<i>one or more persons exercise substantial control</i>)

IV) Determining the aggregate compensation from the reporting organization and any Listed Related Organizations paid to anyone on the Listed Persons list

So, now we have a list of related organizations (most people relying on me for their information are most likely to find Relationship #7, or possibly #1 where a C4 controls a C3 or vice versa).

Note that for the next analysis, our Listed Persons may have to expand if there is an individual in any position of control, but this is unusual for 990 filers in my orbit (990-PF it comes up more often).

So, if there are any Listed Organizations, we insert a question to our questionnaire:

Please review the attached list of organizations, and take a moment and tell us if you received any compensation from any of these organizations during the year (not counting reimbursement for reasonable and actual expenses where you submitted receipts), and if so, how much. As with the part above, we need this information as soon as possible, (our tax reporting cannot move forward until we have these answers).

If you have any concerns about our use of this information, please discuss it with _____.”

Note that in cases of relationships 1 and 7 the information may be already available to the reporting organization (such as a C3/C4 tandem).

Then, the information we need to collect is below:

Relationship Type	What to report? (Contents of Required Disclosure Attachment) <i>(varies by Relationship Type, and remember, only reportable if aggregate compensation is \$50K or more)</i>
1-5	a. Name of the Listed Person receiving compensation from related organization(s)
	b. Name and EIN of each related organization paying comp (EIN not required from related for-profits based on Q&A #9).
	c. Description of the relationship (#1-5 above, with a bit more detail).
	d. The amount of compensation from each organization, reported in same categories as Form 990 Part V-A.
7	a. Name of the Listed Person receiving compensation from related organization(s)
	b. Name and EIN of each related organization paying comp (EIN not required from related for-profits based on Q&A #9).
	c. Description of the relationship (#1-5 above, with a bit more detail).

Attached:

- Instructions to Lines 75b, 75c
- Instructions to Line 51 (referenced by 75b)
- IRS “2006 Form 990 Qs & As” modifying the Instructions to Form 990 for 2006.

payments to welfare benefit plans on behalf of the officers, directors, etc. Such plans provide benefits such as medical, dental, life insurance, severance pay, disability, etc. Reasonable estimates may be used if precise cost figures are not readily available.

Unless the amounts were reported in column (C), report, as deferred compensation in column (D), salaries and other compensation earned during the reporting period, but not yet paid by the date the organization files its return.

Column (E)

Enter both taxable and nontaxable fringe benefits (other than *de minimis* fringe benefits described in section 132(e)). Include expense allowances or reimbursements that the recipients must report as income on their separate income tax returns. Examples include amounts for which the recipient did not account to the organization or allowances that were more than the payee spent on serving the organization. Include payments made under indemnification arrangements, the value of the personal use of housing, automobiles, or other assets owned or leased by the organization (or provided for the organization's use without charge), as well as any other taxable and nontaxable fringe benefits. See Pub. 525 for more information.

Line 75b. Business Relationships

For a definition of *family and business relationships*, see line 51 of these instructions.

Line 75c. Compensation from Related Organizations

Answer "Yes," to this question if any of the organization's listed officers, directors, trustees, key employees, highest compensated employees, or highest compensated professional or other independent contractors received aggregate compensation amounts of **\$50,000 or more** from the organization and all related organizations (as defined below). For this purpose, compensation includes any amount that would be reportable in columns (C), (D), and (E) of Form 990, Part V-A, if provided by the organization.

Required attachment. If the organization answered "Yes," it must attach a schedule that lists, for each officer, director, trustee, key employee, highest compensated employee, or highest compensated professional or other independent contractor, the information requested in 1 and 2, below.

1. For Relationships 1 through 6, provide:

a. The name of the officer, director, etc., receiving compensation from a related organization or organizations;

b. The name and EIN of each related organization that provided the compensation;

c. A description of the relationship between the organization and the related organization(s); and

d. The amount of compensation each related organization provided. Use the same format as required by columns (C) through (E) of Part V-A.

2. If the organizations are related only by *Relationship 7* and/or *Relationship 8*, or if

the *Volunteer exception to Relationship 2* applies, report the following information, but do not report compensation paid by the related organization(s).

a. The name of the officer, director, etc., receiving compensation from a related organization(s);

b. The name and EIN of each related organization that provided such compensation; and

c. A description of the relationship between the organization and the related organization(s).

Reporting compensation. Report compensation paid by a related organization for only that time period during which a relationship existed between the organization and the related organization. Report compensation paid by a related organization in the same period (either calendar or fiscal year) as the organization reports compensation it paid.

Definition of related organization.

Organizations may be related in several ways; the relationships are not mutually exclusive. *Related organizations* are tax-exempt or taxable organizations related to the tax-exempt organization in one or more of the following ways.

• **Relationship 1.** One organization owns or controls the other organization.

• **Relationship 2.** The same person(s) owns or controls both organizations.

• **Relationship 3.** The organizations have a relationship as supporting and supported organizations under section 509(a)(3) (see *Example 1*, later).

• **Relationship 4.** The organizations use a common paymaster. For a definition of common paymaster and illustrated examples, see Regulations section 31.3121(s)-1(b).

• **Relationship 5.** The other organization pays part of the compensation that the organization would otherwise be contractually obligated to pay (see *Example 2*, later).

• **Relationship 6.** The organizations are partners in a partnership or members in an LLC or other joint venture (other than a publicly traded partnership as defined in section 7704(b)).

• **Relationship 7.** The organizations conduct joint programs or share facilities or employees.

• **Relationship 8.** One or more persons exercise substantial influence over both organizations (see *Example 3*, later). For purposes of this relationship, to determine if a person exercises substantial influence over an organization, use the rules stated in section 4958(f)(1) and Regulations section 53.4958-3 (treating the organization as though it were an applicable tax-exempt organization under section 4958(e)).

Substantial influence. The following persons are considered to exercise substantial influence over the organization:

1. The organization's directors, trustees, chief executive officer, and chief financial officer (see Regulations section 53.4958-3(c)).

2. Certain family members (defined as disqualified persons under section 4958(f)(1)(B)) of disqualified individuals, and

3. Certain 35% controlled entities (defined as disqualified persons under section 4958(f)(1)(C)).

Ownership. The term ownership is holding (directly or indirectly) 50% or more of the voting power in a corporation, profits interest in a partnership, or beneficial interest in a trust.

Control. The term control is having 50% or more of the voting power in a governing body, or the power to appoint 50% or more of an organization's governing body, or the power to approve an organization's budgets or expenditures (an effective veto power over the organization's budgets and expenditures). Also, control can be indirect by owning or controlling another organization with such power.

The term governing body is defined by the relevant state law. Generally, the governing body of a corporation is its board of directors and the governing body of a trust is its board of trustees.

Reporting exceptions. The following exceptions apply:

• **Bank or financial institution trustee exception.** If the organization and the other organization are related only because they are both controlled or substantially influenced by a common trustee that is a bank or financial institution, the organization does not need to report either the relationship or the trustee's compensation from the related organization.

• **Common independent contractor exception.** If an independent contractor listed in Schedule A, Part II-A or II-B does not exercise substantial influence, as defined above, over either the organization or the related organization, the organization does not need to report either the relationship or the independent contractor's compensation from the related organization. However, this exception does not apply to a management services company that performs for the organization functions similar to those of president, chief executive officer, chief operating officer, treasurer or chief financial officer. Compensation paid by a related organization to such a management company must be reported by the organization unless another exception applies. See *Examples 5* and *6* later.

• **Volunteer exception.** If *Relationship 2* is met only because the same individuals control both the tax-exempt organization and a for-profit organization that is not owned or controlled directly or indirectly by one or more tax-exempt organizations, and none of the Relationships described in 1 or 3 through 6 are met, then the tax-exempt organization does not have to report the compensation from the for-profit organization of any persons serving the tax-exempt organization as a volunteer without compensation (see *Example 4*, later).

TIP Providing information on compensation received from related organizations does not violate the disclosure provisions of section 7216(a). See also section 6033(a)(1).

Examples illustrating relationships.

Example 1. X, a hospital auxiliary, raises funds for Hospital Y. Z, another hospital auxiliary, coordinates the efforts of Hospital Y's volunteer staff. Both X and Z

are supporting organizations of Hospital Y and are considered related organizations to Hospital Y. Hospital Y is also considered a supported organization of the auxiliaries.

Hospital Y must report (in an attachment to line 75c) the compensation, if any, paid by each of the auxiliaries to the officers, directors, trustees, or key employees listed in the hospital's Form 990, Part V-A, or highest-compensated employees listed in the hospital's Schedule A, Part I, or highest-compensated professional or other independent contractors listed in the hospital's Schedule A, Part II-A or II-B. Both X and Z must report (in an attachment to line 75c) the compensation, if any, paid by Hospital Y to an officer, director, etc., of the auxiliary.

Example 2. Bob, a key employee of Organization B, a 501(c)(4) social welfare organization, conducts fundraising among Organization B's members, with the proceeds going to Organization A, a 501(c)(3) public charity, to carry out disaster relief. The Chief Executive Officers (CEOs) of Organizations A and B agree that Organization A will pay a portion of Bob's salary for a period of time in recognition of Bob's role in the fundraising assistance of Organization B. Because Organization A is paying to Bob a portion of Bob's compensation that Organization B would otherwise be contractually committed to pay, Organizations A and B are related organizations for Form 990 reporting purposes. Organization B must report the payment from Organization A to Bob in an attachment to line 75c.

Example 3. Tom is a trustee of Organization A, a tax-exempt organization, and the CEO of Organization B, a for-profit taxable organization wholly owned by Tom. Tom is considered to exercise substantial influence over both organizations. So, *Relationship 8* is met. If no other relationship is met, then Tom's compensation from Organization B is not reported in an attachment to line 75c of Organization A's Form 990, however Organization A is required to report the name and EIN of Organization B, and a description of the relationship between the two organizations in the line 75c attachment.

Example 4. The facts are the same as in *Example 3*, except that Tom is the sole trustee of both organizations. So, Organizations A and B are related under *Relationship 2* because they are controlled by the same person. In this situation, Tom's compensation from Organization B (as well as the name and EIN of Organization B, and a description of the relationship between the two organizations) is reported in an attachment to line 75c of Organization A's Form 990.

However, if Tom serves Organization A without compensation and none of the other relationships described in 1 or 3 through 6 are met, then because of the *Volunteer exception*, Tom's compensation from Organization B is not reported by Organization A. However, the relationship between Organization A and Organization B must be reported.

Example 5. Organization A is filing its Form 990. Organization B is a taxable subsidiary of Organization A; so,

Organizations A and B are related under *Relationship 1* because A controls B.

Organization A contracts with Company Y for janitorial services. Company Y is listed as one of Organization A's highest-compensated independent contractors. Organization B also contracts with Company Y for janitorial services. Company Y is not a 35% controlled entity of a disqualified person for organization A or Organization B. So, Company Y is listed in Organization A's Schedule A, Part II-B, and Company Y also receives compensation from Organization B, which is related to Organization A.

However, Company Y meets the requirements of the *Common independent contractor exception*, earlier. Company Y is not considered to exercise substantial influence over either Organization A or Organization B if they were applicable tax-exempt organizations within the meaning of section 4958(e). Because of the *Common independent contractor exception* earlier, the relationship between Company Y and Organization B, and Company Y's compensation from Organization B for such janitorial services is not reported by Organization A.

None of Organization A's officers, directors, etc., receive compensation from Organization B. In conclusion, Organization A does not report its relationship with Organization B in an attachment to line 75c, and Organization A answers "No" on line 75c.

Example 6. The facts are the same as in *Example 5*, except that one of Organization A's officers, Sue, receives compensation from Organization B. Organization A must report in an attachment to line 75c its relationship with Organization B, and Sue's compensation from Organization B for services provided to Organization B. Even though Organization A must report Sue's compensation from Organization B, Organization A does not report Company Y's compensation from Organization B because of the *Common independent contractor exception*.

Part V-B. Former Officers, Directors, Trustees, and Key Employees That Received Compensation or Other Benefits

List each former officer, director, trustee, and key employee (as defined in Part V-A) of the organization or disregarded entity described in Regulations sections 301.7701-1 through 301.7701-3 that received compensation or other benefits during the reporting year.

For purposes of reporting all amounts in columns (B) through (E) in Part V-B, either use the organization's tax year, or the calendar year ending within such tax year.

Give the preferred address at which these former officers, directors, etc., want the Internal Revenue Service to contact them.

Use an attachment if there are more persons to list in Part V-B.

Show all forms of cash and noncash compensation or benefits received by each

listed former officer, director, etc., whether paid currently or deferred.

If the organization pays any other person, such as a management services company, for the services provided by any of its former officers, directors, trustees, or key employees, report the compensation and other items in Part V-A as if the organization had paid the former officers, directors, etc., directly.

A failure to fully complete Part V-B can subject both the organization and the individuals responsible for such failure to penalties for filing an incomplete return. See *General Instruction K*. In particular, entering the phrase on Part V-B, "Information available upon request," or a similar phrase, is not acceptable.

The organization may also provide an attachment to explain the entire 2006 compensation package for any person listed in Part V-B.

Each person listed in Part V-B should report the listed compensation on his or her income tax return unless the Code specifically excludes any of the payments from income tax. See Pub. 525 for details.

Column (A)

Report the name and address of each person who was a former officer, director, trustee, or key employee (defined in *Part V-A*) at any time during the calendar year.

Column (B)

In column (B), report all secured and unsecured loans and salary advances to former officers, directors, trustees and key employees.

Column (C)

For each person listed, report salary, fees, bonuses, and severance payments paid. Include current-year payments of amounts reported or reportable as deferred compensation in any prior year.

Column (D)

Include in this column all forms of deferred compensation and future severance payments (whether or not funded; whether or not vested; and whether or not the deferred compensation plan is a qualified plan under section 401(a)). Include also payments to welfare benefit plans on behalf of the officers, directors, etc. Such plans provide benefits such as medical, dental, life insurance, severance pay, disability, etc. Reasonable estimates may be used if precise cost figures are not readily available.

Unless the amounts were reported in column (C), report, as deferred compensation in column (D), salaries and other compensation earned during the period covered by the return, but not yet paid by the date the organization files its return.

Column (E)

Enter both taxable and nontaxable fringe benefits (other than *de minimis* fringe benefits described in section 132(e)). Include expense allowances or reimbursements that the recipients must report as income on their separate income tax returns. Examples include amounts for which the recipient did not account to the organization or allowances that were more than the payee spent on serving the

Line 49. Grants Receivable

Enter the total grants receivable from governmental agencies, foundations, and other organizations as of the beginning and end of the year. Organizations that follow SFAS 116 may report the present value of the grants receivable as of each balance sheet date.

Line 50a. Receivables From Current and Former Officers, Directors, Trustees, And Key Employees

Report all receivables due from current and former officers, directors, trustees, and key employees, and all secured and unsecured loans to such persons, on line 50a and in an attached schedule discussed below. Report interest from such receivables on line 11. For a definition of key employee, see the instructions in Part V-A.

In the required schedule, report each receivable separately even if more than one loan was made to the same person or the same terms apply to all loans. Report salary advances, and other advances for the personal use and benefit of the recipient, and receivables subject to special terms, or arising from nontypical transactions, as separate loans for each current and former officer, director, trustee, and key employee. For credit unions, report only loans, or receivables that are not made on the same terms as all other members of the organization.

Schedule format. For each outstanding loan, or other receivable that must be reported separately, the attached schedule should show the following information (preferably in columnar form):

1. Borrower's name and title,
2. Original amount,
3. Balance due,
4. Date of note,
5. Maturity date,
6. Repayment terms,
7. Interest rate,
8. Security provided by the borrower,
9. Purpose of the loan, and
10. Description and fair market value of the consideration furnished by the lender (for example, cash—\$1,000; or 100 shares of XYZ, Inc., common stock—\$9,000).

Line 50b. Receivables From Other Disqualified Persons

Report all receivables due from disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) for the year on line 50b and in a required attached schedule. Do not include on line 50b, amounts reported on line 50a.

For a definition of disqualified persons, see *Disqualified Person* under *General Instruction P*, earlier.

Report each receivable separately even if more than one loan was made to the same person or the same terms apply to all loans. Report advances for the personal use and benefit of the recipient, and receivables subject to special terms, or arising from nontypical transactions, as separate loans for each disqualified person that is not a current or former officer, director, trustee, or key employee. For credit unions, report only loans, or receivables that are not made on

the same terms as all other members of the organization.

Schedule format. For each outstanding loan, or other receivable that must be reported separately, the attached schedule should show the following information (preferably in columnar form):

1. Borrower's name and title,
2. Original amount,
3. Balance due,
4. Date of note,
5. Maturity date,
6. Repayment terms,
7. Interest rate,
8. Security provided by the borrower,
9. Purpose of the loan, and
10. Description and fair market value of the consideration furnished by the lender (for example, cash—\$1,000; or 100 shares of XYZ, Inc., common stock—\$9,000).

Line 51. Other Notes and Loans Receivable

Line 51a. Enter on line 51a the combined total of receivables (both notes and loans) to non-key employees. Do not include the following on line 51a.

- Receivables reported on line 50.
- Program-related investments. (Report program-related investments on line 58.)
- Notes receivable acquired as investments (report receivables acquired as investments on line 56).

For notes and loans that represent program-related investments (defined in the line 2 instructions), report the interest income on line 2. For all other notes and loans receivable included on line 51, report the income on line 11.

Line 51b. Enter on line 51b the total amount of doubtful accounts.

Notes receivable. Enter the amount of all notes receivable not listed on line 50 and not acquired as investments. Attach a schedule similar to that requested in the instructions for line 50. The schedule should also describe the family or business relationship of the borrower to any officer, director, trustee, key employee, or substantial contributor of the organization.

Notes receivable from loans by a credit union to its members and scholarship loans by a section 501(c)(3) organization do not have to be itemized. However, identify these loans as such on a schedule and indicate the total amount of such loans that are outstanding.

For a note receivable from another organization exempt under the same paragraph of section 501(c) as the filing organization, list only the name of the borrower and the balance due. For example, a section 501(c)(3) organization would have to provide the full details of a loan to a section 501(c)(4) organization but would have to provide only the name of the borrower and the balance due on a note from a loan to another section 501(c)(3) organization.

Loans receivable. Enter the gross amount of loans receivable, less the allowance for doubtful accounts, from the normal activities of the filing organization such as loans by a credit union to its members or scholarship loans by a section

501(c)(3) organization. A schedule of these loans is not required.

Report loans to current and former officers, directors, trustees, and key employees on line 50. Report loans to non-key employees, vendors, suppliers, and independent contractors on line 51. Attach a schedule similar to that called for in the instructions for line 50. The schedule should also describe the family or business relationship, if any, between the borrower and any officer, director, trustee, key employee, or *substantial contributor* of the organization as defined in section 507(d)(2)(A).

Family relationships include an individual's spouse, ancestors, children, grandchildren, great-grandchildren, siblings (whether by whole or half blood), and the spouses of children, grandchildren, great-grandchildren, and siblings.

Business relationships are employment and contractual relationships, and common ownership of a business where any officers, directors, or trustees, individually or together, possess more than a 35% ownership interest in common. **Ownership** is voting power in a corporation, profits interest in a partnership, or beneficial interest in a trust.



Report program related investments on line 58.

Line 52. Inventories For Sale Or Use

Enter the amount of materials, goods, and supplies purchased, manufactured by the organization, or donated and held for future sale or use.

Line 53. Prepaid Expenses And Deferred Charges

Enter the amount of short-term and long-term prepayments of expenses attributable to one or more future accounting periods. Examples include prepayments of rent, insurance, and pension costs, and expenses incurred for a solicitation campaign of a future accounting period.

Line 54a. Investments—Publicly-Traded Securities

Enter the book value, which may be market value, of securities held as investments. Check the appropriate box to indicate whether the securities are reported at cost or fair market value. Publicly traded securities include common and preferred stocks, bonds (including governmental obligations such as bonds and Treasury bills), and mutual fund shares that are listed and regularly traded in an over-the-counter market or on an established exchange and for which market quotations are published or otherwise readily available.

Do not report stock holdings that represent 5% or more of the outstanding shares of stock of the same class. Instead, report them on line 54b. Report dividends and interest from these securities on line 5 of Part I, Revenue.

Line 54b. Investments—Other Securities

Enter the book value, which may be market value, of securities held as investments that

2006 Form 990 Qs & As
IRS Tax Exempt & Government Entities Division
April 26, 2007

This document supplements Form 990 instructions revised or added for 2006. IRS experts discussed these changes in [telephone conferences](#) conducted on March 21 and 22, 2007.

Suggestions for clarifications of instructions not related to changes made in 2006 may be submitted through the [normal comment process](#).

Line 1d

1) Q: Why does the Line 1d amount exclude amounts included in Line 1a?

A: In the event that a governmental unit makes a contribution or grant to a donor-advised fund sponsored by the filing organization, that amount should be reported in Line 1a and not on Line 1d, in order to avoid double counting.

Line 25

2) Q: When an organization does not have any differences between amounts reported on line 25a/25b and Parts V-A/V-B, can the organization include a reference directly to Parts V-A/V-B in lieu of completing a separate schedule for Line 25a/25b?

A: The Service amends the instructions so that schedules for Lines 25a, 25b, or 25c are not required.

3) Q: Why are “loans and advances” to disqualified persons reported in Line 25c of the Statement of Functional Expenses, given that they are not an expense?

A: The instructions contain an error—with respect to loans and advances owed to disqualified persons by the filing organization, interest on the loan (which is an expense) rather than the loan amount itself is what was intended to be reported. In general, any payments of compensation or other amounts paid to disqualified persons not included on lines 25a and b but otherwise reportable on other lines of the expense statement should be reported on line 25c.

Taxpayers that instead rely on the original instructions and accurately report the principal amount of loans and advances will not be penalized for filing an inaccurate return.

4) Q: The instructions say to report compensation “payable” for the tax year. Normally, payables are reported on the balance sheet. Please explain what is meant by “compensation payable” in the context of reporting officer compensation expense.

A: Report amounts on Lines 25a, 25b and 25c consistent with the method of accounting the organization uses to complete the Form 990.

Line 75b

5) Q: Is the scope of the question limited to relationships between officers etc. of the filing organization only, or are relationships between officers etc. of related organizations also included?

A: The scope of the question is limited to relationships between officers etc. of the filing organization only.

6) Q: Does a business relationship exist between two directors of the filing organization where one director does business with the wholly owned corporation of another director?

A: Business relationships are employment relationships, contractual relationships, and common ownership of a business in excess of 35%. As the instructions specify no rules for corporate attribution, only direct relationships must be reported (e.g., one director is employed by another in a sole proprietorship or partnership, or one director serves the other as attorney or accountant in a sole proprietorship or partnership).

7) Q: What should I do if I am unable to obtain information required for the attached schedule about the business relationships among individuals listed in Form 990 Part V-A, Schedule A Part I and Schedule A Parts II-A and II-B?

A: The organization is not required to provide information about such business relationships if it is unable to secure the information after making a reasonable effort to obtain the information.

An example of a reasonable effort would be for the Form 990 preparer or an officer eligible to sign the Form 990 to distribute a questionnaire annually to each officer, director, trustee, and key employee listed in Part V-A; each highest compensated employee listed in Schedule A, Part I; and each highest compensated professional and other independent contractor listed in Schedule A, Parts II-A and II-B. The questionnaire should require the name and title, date, and signature of each person reporting this information. The questionnaire should contain the family and business definitions set out in the instructions for Line 51.

Line 75c

8) Q: What is a related organization?

A: The 2006 Form 990 instructions for Line 75c set forth eight types of related organizations, including Relationship 6 (the organizations are partners in a partnership) and Relationship 8 (one or more persons have substantial influence in both organizations). The Service amends the instructions so that Relationships 6 and 8 may be disregarded.

9) Q: What if I cannot obtain the EIN of a taxable related organization?

A: The instructions for Line 75c also require the reporting of the employer identification number (EIN) of the taxable related organizations. The Service amends the instructions so that the EINs of taxable related organizations are not required to be reported.

10) Q: Does a volunteer serving an exempt organization without compensation but receiving expense reimbursements under an accountable plan still qualify for the volunteer exception?

A: Yes.

11) Q: As part of its mission, Exempt Organization A provides through its employee (Mr. C) some services to Exempt Organization B. B reimburses A for C's services by writing a check payable to A. C receives his regular compensation payments from A and nothing from B. Is Relationship 5 applicable (i.e., the other organization pays part of the compensation that the organization would otherwise be contractually obligated to pay).

A: No. Relationship 5 would apply only if B made its payment directly to C and A had withheld some part of its contractually obligated amounts (not necessarily corresponding to the amount paid by B to C).

Part V-B

12) Q: If a person is current officer for part of the year and is a former officer for the remainder of the year, should that person be listed as a current officer, as a former officer, or as both?

A: The instructions require listing in Part V-A of any person who was a current officer at any time during the year. All of that person's compensation from the organization should be listed in Part V-A, whether received as a current officer, as a former officer, or in another capacity (e.g., independent contractor). A former officer, director, trustee, or key employee should be listed in Part V-B only if such person is not listed in Part V-A in any capacity.

13) Q: Part IV Line 50 requires organizations to report details of loans to officers, but excepts loans by credit unions made on the same terms as for all other members. Does this exception also apply to loans by credit unions to former officers reportable in Part V-B?

A: Yes. The Service amends the instructions to incorporate the exception in Part IV Line 50 to Part V-B.

14) Q: Is there a limit on the look-back period in reporting compensation or loans to former officers, even if the person has not been in a position to exercise substantial influence over the affairs of the organization for over 30 years?

A: No. A reasonable effort should be made to determine whether any persons that were paid compensation or held loans are former officers, directors, etc.

15) Q: Should the reference to Part V-A in the first full paragraph of the third column of page 36 of the instructions actually be to Part V-B?

A: Yes.

Lines 106-107

16) Q: Are transfers other than interest, annuities, royalties, and rent required to be reported in Lines 106 and 107?

A: Yes, all transfers of funds between controlling and controlled entities must be reported, whether or not interest, annuities, royalties, or rents. Section 6033(h), added by the Pension Protection Act, requires controlling organizations to report the following information:

- interest, annuities, royalties, or rents received from each controlled entity;
- loans made to each controlled entity;
- and transfers of funds between controlling organizations and each controlled entity.

Report only the total of all payments for a specific transfer transaction. For example, for a loan, report only the total of all payments rather than each individual payment for that loan.

Schedule A

17) Q: If a disqualified person's compensation is set forth in the Form 990 Line 25c attachment and the person is also one of the five highest paid employees over \$50,000 (other than an officer, director, trustee, or key employee), should the person also be listed in Schedule A Part I?

A: Yes. A disqualified person whose compensation is required to be listed in Line 25c may also be a highly paid employee whose compensation is required to be listed in Schedule A Part I. A schedule is no longer required for Line 25c – see number 2 above.

Schedule B

18) Q: Should the reference to Part V-A in the first full paragraph of the third column of page 36 of the instructions actually be to Part V-B?

A: Yes.