

2023

Instructions for Form 990-EZ

**Short Form 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 3 of 4



Department of the Treasury
Internal Revenue Service

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Line 44a. Donor Advised Funds



A sponsoring organization of a donor advised fund must file Form 990 rather than Form 990-EZ, regardless of the amount of its gross receipts or net assets.

A sponsoring organization is any of the following types of organizations if it maintains one or more donor advised funds.

1. A section 501(c)(3) public charity described in section 509(a)(1), (2), or (3).
2. A veterans' organization, organized in the United States or any of its territories, no part of the net earnings of which inures to the benefit of any private shareholder or individual, that meets the requirements to receive deductible contributions under section 170(c)(3).
3. A domestic fraternal organization described in section 501(c)(8) or (10)

that uses charitable contributions exclusively for charitable purposes.

4. A cemetery company described in section 501(c)(13).

A “donor advised fund” is a fund or account:

1. That is separately identified by reference to contributions of a donor or donors,
2. That is owned and controlled by a sponsoring organization, and
3. Over which the donor or donor advisor has or reasonably expects to have advisory privileges in the distribution or investment of amounts held in the donor advised fund or account because of the donor's status as a donor.

A donor advised fund doesn't include any fund or account:

1. That makes distributions only to a single identified organization or governmental entity; or
2. For which a donor or donor advisor gives advice about which individuals receive grants for travel, study, or other similar purposes if:
 - a. The donor's or donor advisor's advisory privileges are performed exclusively by such person in the donor's or donor advisor's capacity as a committee member in which all of the committee members are appointed by the sponsoring organization;
 - b. No combination of donors or donor advisors directly or indirectly controls the committee; and
 - c. All grants from the fund or account are awarded on an objective and nondiscriminatory basis following a

procedure approved in advance by the board of directors of the sponsoring organization. The procedure must be designed to ensure that all grants meet the requirements of section 4945(g)(1), (2), or (3); or

3. That the Secretary exempts from being treated as a donor advised fund because either such fund or account is advised by a committee not directly or indirectly controlled by the donor or donor advisor or such fund benefits a single identified charitable purpose. For example, see Notice 2006-109, 2006-51 I.R.B. 1121, which is modified by Rev. Proc. 2009-32, 2009-28 I.R.B.142; and Rev. Proc. 2009-32 is modified and superseded by Rev. Proc. 2011-33, 2011-25 I.R.B. 887, which is modified and superseded by

Rev. Proc. 2018-32, 2018-23 I.R.B.
739; and any future related guidance.

A “donor advisor” is any person appointed or designated by a donor to advise a sponsoring organization on the distribution or investment of amounts held in the donor's donor advised fund or similar account.

Line 44b. Hospital Facilities

If the organization operated one or more hospital facilities during the tax year, it must complete and file Form 990 and Schedule H (Form 990) and not Form 990-EZ.

A “hospital facility” is a facility that is required to be licensed, registered, or similarly recognized by a state as a hospital. This includes a hospital that is operated through a disregarded entity or joint venture treated as a partnership for federal tax purposes. It doesn't include hospitals that are located outside the United States. It also doesn't include hospitals that are operated by entities

organized as separate legal entities from the organization that are treated as corporations for federal tax purposes.



The definition of "hospital" for Schedule A (Form 990), Part I, is different from the definition of "hospital facility" for Schedule H (Form 990). See the Glossary in the Form 990 instructions for the respective definitions.

Lines 44c and 44d. Payments for Indoor Tanning Services

The organization should check "Yes" for line 44c if it received any payments during the year for indoor tanning services. "Indoor tanning services" are services employing any electronic product designed to incorporate one or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

If an organization received a payment for services for indoor tanning services during the year, it must collect from the recipient of the services a tax equal to 10% of the amount paid for such service, whether paid by insurance or otherwise, and remit such tax quarterly to the IRS by filing Form 720, Quarterly Federal Excise Tax Return. If the organization filed Form 720 during the year, it should check "Yes" to line 44d. If it answers "No" to line 44d, it should explain in Schedule O (Form 990) why it didn't file Form 720.

Line 45a. Section 512(b)(13) Controlled Entity

Answer "Yes" if the organization had a controlled entity within the meaning of section 512(b)(13) during the tax year. A "controlled entity within the meaning of section 512(b)(13)" may be a stock or nonstock corporation, association, partnership, LLC, or trust of which the

controlling organization owns more than 50% of:

- The stock of a corporation (measured by voting power or value),
- The profits or capital interest in a partnership, or
- The beneficial interest in a trust or other entity.

For the definition of “control” in this context, see section 512(b)(13)(D) and Regulations section 1.512(b)-1(l)(4) (substituting “more than 50%” for “at least 80%” in the regulations, for purposes of this definition). For the definition of “control of a nonprofit organization,” see the instructions for line 49, later.

Line 45b. Transactions With a Section 512(b) (13) Controlled Entity

A controlling organization of a controlled entity under section 512(b)(13) must file

Form 990 and Schedule R (Form 990), Related Organizations and Unrelated Partnerships, rather than Form 990-EZ, if the controlling organization either:

1. Received or accrued from the controlled entity any interest, annuities, royalties, or rent, regardless of amount, during the tax year; or
2. Engaged in another type of transaction (see the Instructions for Schedule R (Form 990) for a description of transactions) with the controlled entity, if the amounts involved during the tax year for such type of transaction exceeded \$50,000.



*The organization should check "Yes" to line 45b **only** if transactions with the controlled entity are described in (1) or (2) above. That organization should file Form 990 and Schedule R (Form 990). If transactions with the controlled entity are **not** described in (1) or (2), the organization isn't*

precluded from filing Form 990-EZ because of those transactions, and should check "No" to line 45b.

Line 46. Political Campaign Activities

Answer "Yes" and complete the applicable parts on Schedule C (Form 990), Part I, if the organization participated or intervened in (including the publishing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office, directly or indirectly. See the Instructions for Schedule C (Form 990) for a discussion of political activity.

Part VI. Section 501(c)(3) Organizations

All section 501(c)(3) organizations (including, for purposes of Form 990-EZ, section 4947(a)(1) nonexempt charitable trusts) must complete Part VI.

Line 47. Lobbying Activities

Answer "Yes" and complete Schedule C (Form 990), Part II, if the organization engaged in lobbying activities or had a section 501(h) election in effect during the tax year. All section 501(c)(3) organizations that had a section 501(h) election in effect during the tax year must complete Schedule C (Form 990), Part II-A, regardless of whether they engaged in lobbying activities during the tax year. See the Instructions for Schedule C (Form 990) for a discussion of lobbying activities.

Line 48. Schools

Answer "Yes" and complete Schedule E (Form 990) if the organization checked the box on Schedule A (Form 990), Part I, line 2, indicating that it is a school.

Line 49. Transfers to Exempt Non-Charitable Related Organizations

Answer "Yes" if the organization made any transfer to a related organization that is an exempt organization other than a 501(c) (3) organization, such as a related 501(c)(4) organization or a related 527 political organization.

A transfer for this purpose is any transaction or arrangement in which the organization transferred something of value (cash, other assets, services, use of property, etc.) to the exempt non-charitable related organization, whether or not for adequate consideration. The organization can (but isn't required to) explain the transfer in Schedule O (Form 990).

For purposes of Form 990-EZ, a related organization is an organization (including a nonprofit organization, a stock corporation, a partnership or LLC, a trust, and a

governmental unit or other governmental entity) that is in one or more of the following relationships to the filing organization at any time during the tax year.

Parent. An organization that controls the filing organization (see definition of “control,” later).

Subsidiary. An organization controlled by the filing organization.

Brother/Sister. An organization controlled by the same person or persons that control the filing organization. However, if the filing organization is a trust that has a bank or financial institution trustee that is also the trustee of another trust, the other trust isn't a brother/sister related organization of the filing organization on the ground of common control by the bank or financial institution trustee.

Supporting/Supported. An organization that claims to be at any time during the tax

year, or that is classified by the IRS at any time during the tax year, as the following.

- A supporting organization of the filing organization within the meaning of section 509(a)(3), if the filing organization is a supported organization within the meaning of section 509(f)(3); or
- A supported organization, if the filing organization is a supporting organization.

For purposes of determining whether an organization is related, control exists in the following situations.

Control of a nonprofit organization (or other organization without owners or persons having beneficial interests, whether the organization is taxable or tax exempt). One or more persons (whether individuals or organizations) control a nonprofit organization if they have the power

to remove and replace (or to appoint, elect, or approve or veto the appointment or election of, if such power includes a continuing power to appoint, elect, or approve or veto the appointment or election of, periodically or in the event of vacancies) a majority of the nonprofit organization's directors or trustees, or a majority of members who elect a majority of the nonprofit organization's directors or trustees.

Such power can be exercised directly by a parent organization through one or more of the parent organization's officers, directors, trustees, or agents acting in their capacity as officers, directors, trustees, or agents of the parent organization. Also, a parent organization controls a subsidiary nonprofit organization if a majority of the subsidiary's directors or trustees are trustees, directors, officers, employees, or agents of the parent.

Control of a stock corporation. One or more persons (whether individuals or

organizations) control a stock corporation if they own more than 50% of the stock (by voting power or value) of the corporation.

Control of a partnership or LLC. One or more persons control a partnership if they own more than 50% of the profits or capital interests in the partnership (including an LLC treated as a partnership or disregarded entity for federal tax purposes, regardless of the designation under state law of the ownership interests as stock, membership interests, or otherwise). A person also controls a partnership if the person is a managing partner or managing member of a partnership or LLC that has three or fewer managing partners or managing members (regardless of which partner or member has the most actual control), or if the person is a general partner in a limited partnership that has three or fewer general partners (regardless of which partner has the most actual control). For this purpose, a “managing partner” is a partner

designated as such under the partnership agreement, or regularly engaged in the management of the partnership even though not so designated.

Control of a trust with beneficial interests. One or more persons control a trust if they own more than 50% of the beneficial interests in the trust. A person's beneficial interest in a trust shall be determined in proportion to that person's actuarial interest in the trust as of the end of the tax year.

Control can be indirect. For example, if the filing organization controls Entity A, which in turn controls Entity B, the filing organization will be treated as controlling Entity B. To determine indirect control through constructive ownership of a corporation, rules under section 318 apply. Similar principles apply for purposes of determining constructive ownership of another entity (a partnership or trust). If an entity X controls

an entity treated as a partnership by being one of three or fewer partners or members, then an organization that controls X also controls the partnership.

See Regulations sections 301.7701-2, -3, and -4 for more information on classification of corporations, partnerships, disregarded entities, and trusts.

Line 50. Five Highest Compensated Employees Over \$100,000

Complete this table for the five employees (other than officers, directors, trustees, and key employees as defined in the Part IV instructions, earlier) with the highest annual compensation over \$100,000. On line 50f, enter the number of other employees (other than officers, directors, trustees, and key employees) with annual compensation over \$100,000 who aren't individually listed.

A fiscal-year organization must use the calendar year ending within its tax year to

determine its five highest compensated employees over \$100,000, and to report the compensation. Combine the compensation includible in Part VI, columns (c), (d), and (e), in determining whether compensation exceeds \$100,000 for the calendar year.

See the Part IV instructions, earlier, for more information on compensation reporting and for completing table columns (a) through (e) of line 50, and for information on the \$10,000-per-item exception for column (e).

Example. Sam isn't a key employee. The organization uses a calendar tax year. During the year, Sam received a salary of \$80,000 and a \$2,000 bonus. Sam contributed \$5,000 of the salary on a pre-tax basis to a qualified defined-contribution retirement plan, and received a matching employer contribution of \$5,000 from the organization. Sam contributed another \$5,000 of the salary on a pre-tax basis to a qualified health plan. Sam received from the employer nontaxable health

benefits for self and family of \$10,000, and nontaxable family educational benefits of \$5,000.

To determine whether Sam is to be listed as among the five highest compensated employees, Sam's compensation in column (c) would be \$82,000, the amount reportable in box 5 of Form W-2 consisting of the \$80,000 salary (including Sam's contributions to the qualified plans) and the \$2,000 bonus. Sam's compensation in column (d) would be \$15,000, consisting of the organization's payments of \$5,000 to the retirement plan and \$10,000 to the health plan. Sam wouldn't report the \$5,000 in nontaxable family educational benefits in column (e) because it is excluded under the \$10,000-per-item exception for column (e). Thus, Sam's total compensation of \$97,000 wouldn't place Sam among the five highest compensated employees over \$100,000.

See Pub. 525 for more information.

Line 51. Five Highest Compensated Independent Contractors Over \$100,000

Complete this table for the five highest compensated independent contractors that received more than \$100,000 in compensation for services, whether professional services or other services, from the organization. On line 51d, enter the number of other independent contractors with annual compensation over \$100,000 that aren't individually listed.

Independent contractors include organizations as well as individuals and can include professional fundraisers, law firms, accounting firms, publishing companies, management companies, and investment management companies. Do not report public utilities or insurance providers as independent contractors. See Pub. 1779, Independent Contractor or Employee, and Pub. 15-A, Employer's Supplemental Tax Guide, for

distinguishing employees from independent contractors.

The organization must use the calendar year ending with or within its tax year in determining its five highest compensated independent contractors and reporting their compensation in such year on line 51.

Column (c)—Compensation. Enter the amount of compensation the organization paid, whether reported in box 1 of Form 1099-NEC and/or box 6 of Form 1099-MISC or paid under the parties' agreement or applicable state law, for the calendar year ending with or within the organization's tax year. Otherwise, report the amount paid under the parties' agreement or applicable state law.



Forms 1099-NEC and 1099-MISC aren't always required to be issued for payments to an independent contractor.

Compensation includes fees and similar payments to independent contractors but not reimbursement of expenses. However, for this purpose, the organization must report the gross payment to the independent contractor that includes expenses and fees if the expenses aren't separately reported to the organization.

Signature Block

The return must be signed by the current president, vice president, treasurer, assistant treasurer, chief accounting officer, or other corporate officer (such as tax officer) who is authorized to sign as of the date this return is filed. A receiver, trustee, or assignee must sign any return any one of them file for a corporation or association. See Regulations section 1.6012-3(b) (4). For a trust, the authorized trustee(s) must sign.

Paid Preparer

Generally, anyone who is paid to prepare the return must sign the return, list the preparer taxpayer identification number (PTIN), and fill in the other blanks in the *Paid Preparer Use Only* area. An employee of the filing organization isn't a paid preparer.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature;
- Enter the preparer information (including the preparer's PTIN and the preparer firm's EIN, if applicable); and
- Give a copy of the return to the organization.

Any paid preparer can apply for and obtain a PTIN online at [IRS.gov/PTIN](https://www.irs.gov/PTIN) or by filing Form W-12, IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal.



Enter the paid preparer's PTIN, not the social security number (SSN), in the "PTIN" box in the paid preparer's block. The IRS won't redact the paid preparer's SSN if such SSN is entered on the paid preparer's block. Because Form 990-EZ is a publicly disclosable document, any information entered in this block will be publicly disclosed (see Appendix D).

Note. A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program. Also, facsimile signatures are authorized.

Paid Preparer Authorization

On the last line of Form 990-EZ, check "Yes" if the IRS can contact the paid preparer who signed the return to discuss the return. This authorization applies only to the individual whose signature appears in the *Paid Preparer Use Only* section of Form 990-EZ. It doesn't

apply to the firm, if any, shown in that section.

By checking this box "Yes," the organization is authorizing the IRS to contact the paid preparer to answer any questions that may arise during the processing of the return. The organization is also authorizing the paid preparer to:

- Give the IRS any information that is missing from the return;
- Call the IRS for information about the processing of the return; and
- Respond to certain IRS notices about math errors, offsets, and return preparation.

The organization isn't authorizing the paid preparer to bind the organization to anything or otherwise represent the organization before the IRS.

The authorization will automatically end no later than the due date (excluding extensions) for filing the organization's 2024 Form 990-EZ. If the organization wants to expand the paid preparer's authorization or revoke the authorization before it ends, see Pub. 947, Practice Before the IRS and Power of Attorney.

Check "No" if the IRS is to contact the organization at the address or telephone number listed in the heading, rather than the paid preparer.

Appendix of Special Instructions to Form 990-EZ Contents

- A. Exempt Organizations Reference Chart**
- B. How To Determine Whether an Organization's Gross Receipts Are Normally \$50,000 (or \$5,000) or Less**
- C. Special Gross Receipts Tests for Determining Exempt Status of Section 501(c)(7) and Section 501(c)(15) Organizations**
- D. Public Inspection of Returns**
- E. Section 4958 Excess Benefit Transactions**
- F. Forms and Publications To File or Use**

G. Use of Form 990 or 990-EZ To Satisfy State Reporting Requirements

H. Contributions

Appendix A: Exempt Organizations Reference Chart

EO Reference Chart

To determine how the Instructions for Form 990-EZ apply to the organization, an organization must know the Code section under which the organization is exempt.

Type of Organization	I.R.C. Section
Corporations Organized Under Act of Congress	501(c)(1)
Title Holding Corporations	501(c)(2)
Charitable, Religious, Educational, Scientific, etc., Organizations	501(c)(3)
Civic Leagues and Social Welfare Organizations	501(c)(4)
Labor, Agricultural, and Horticultural Organizations	501(c)(5)
Business Leagues, etc.	501(c)(6)
Social and Recreation Clubs	501(c)(7)
Fraternal Beneficiary and Domestic Fraternal Societies and Associations	501(c)(8) and (c)(10)
Voluntary Employees' Beneficiary Associations	501(c)(9)
Teachers' Retirement Fund Associations	501(c)(11)
Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, etc.	501(c)(12)
Cemetery Companies	501(c)(13)
State-Chartered Credit Unions, Mutual Reserve Funds, etc.	501(c)(14)
Insurance Companies or Associations Other Than Life	501(c)(15)
Cooperative Organizations To Finance Crop Operations	501(c)(16)
Supplemental Unemployment Benefit Trusts	501(c)(17)
Employee-Funded Pension Trusts (created before June 25, 1959)	501(c)(18)
Organizations of Past or Present Members of the Armed Forces	501(c)(19) and (c)(23)
Black Lung Benefit Trusts	501(c)(21)
Withdrawal Liability Payment Funds	501(c)(22)
Trusts Described in Section 4049 of the Employer Retirement Income Security Act	501(c)(24)
Title Holding Corporations or Trusts	501(c)(25)

Type of Organization	I.R.C. Section
State-Sponsored Organizations Providing Health Coverage for High-Risk Individuals	501(c)(26)
State-Sponsored Workmen's Compensation and Insurance and Reinsurance Organizations	501(c)(27)
National Railroad Retirement Investment Trust	501(c)(28)
Qualified Nonprofit Health Insurance Issuers	501(c)(29)
Religious and Apostolic Associations	501(d)
Cooperative Hospital Service Organizations	501(e)
Cooperative Service Organizations of Operating Educational Organizations	501(f)
Amateur Sports Organizations	501(j)
Childcare Organizations	501(k)
Charitable Risk Pools	501(n)
Political Organizations	527

Appendix B: How To Determine Whether an Organization's Gross Receipts Are Normally \$50,000 (or \$5,000) or Less

To figure whether an organization has to file Form 990-EZ (or Form 990), apply the \$50,000 (or \$5,000) gross receipts test (below) using the following definition of gross receipts and information in *Figuring Gross Receipts*, later.

Gross Receipts

Gross receipts are the total amounts the organization received from all sources during its annual tax year (including short years), without subtracting any costs or expenses.



Do not use the definition of gross receipts described in Appendix C to figure gross receipts for this purpose. The Appendix C tests are limited to

determining the tax-exempt status of section 501(c)(7) and 501(c)(15) organizations.

Gross receipts when acting as an agent.

If a local chapter of a section 501(c)(8) fraternal organization collects insurance premiums for its parent lodge and merely sends those premiums to the parent without asserting any right to use the funds or otherwise deriving any benefit from them, the local chapter doesn't include the premiums in its gross receipts. The parent lodge reports them instead. The same treatment applies in other situations in which one organization collects funds merely as an agent for another.

Figuring Gross Receipts

Figure gross receipts for Forms 990 and 990-EZ as follows.

Form 990. Gross receipts are the sum of lines 6b (both columns), 7b (both columns), 8b, 9b, 10b, and 12 (column A) of Form 990, Part VIII.

Form 990-EZ. Gross receipts are the sum of lines 5b, 6c, 7b, and 9 of Form 990-EZ, Part I.

Example. Organization Elm reported \$50,000 as total revenue on line 9 of its Form 990-EZ. Elm added back the costs and expenses it had deducted on lines 5b (\$2,000), 6c (\$1,500), and 7b (\$500) to its total revenue of \$50,000 and determined that its gross receipts for the tax year were \$54,000.

\$50,000 Gross Receipts Test

To determine whether an organization's gross receipts are normally \$50,000 or less, apply the following test. An organization's gross receipts are considered normally to be \$50,000 or less if the organization is:

1. Up to a year old and has received, or donors have pledged to give, \$75,000 or less during its first tax year;
2. Between 1 and 3 years old and averaged \$60,000 or less in gross

receipts during each of its first 2 tax years; or

3. Three years old or more and averaged \$50,000 or less in gross receipts for the immediately preceding 3 tax years (including the year for which the return would be filed).

If the organization's gross receipts are normally \$50,000 or less, it must submit Form 990-N if it chooses not to file Form 990 or 990-EZ. In general, organizations excepted from filing Form 990 or 990-EZ because of low gross receipts must submit Form 990-N. See the filing exceptions described in *General Instructions B*, earlier.

\$5,000 Gross Receipts Test

To determine whether an organization's gross receipts are normally \$5,000 or less, apply the following test. An organization's gross receipts are considered normally to be \$5,000 or less if the organization is:

1. Up to a year old and has received, or donors have pledged to give, \$7,500 or less during its first tax year;
2. Between 1 and 3 years old and averaged \$6,000 or less in gross receipts during each of its first 2 tax years; or
3. Three years old or more and averaged \$5,000 or less in gross receipts for the immediately preceding 3 tax years (including the year for which the return would be filed).

Appendix C: Special Gross Receipts Tests for Determining Exempt Status of Section 501(c)(7) and Section 501(c)(15) Organizations

Section 501(c)(7) organizations (social clubs) and 501(c)(15) organizations (insurance companies) apply the same gross receipts

test as other organizations to determine whether they must file Form 990 or 990-EZ. However, section 501(c)(7) and section 501(c)(15) organizations are also subject to separate gross receipts tests to determine if they qualify as tax exempt for the tax year. The following tests use a special definition of gross receipts for purposes of determining whether these organizations are exempt for a particular tax year.

Section 501(c)(7)

A section 501(c)(7) organization can receive up to 35% of its gross receipts, including investment income, from sources outside its membership and remain tax exempt. Part of the 35% (up to 15% of gross receipts) can be from public use of a social club's facilities.

“Gross receipts,” for purposes of determining the tax-exempt status of section 501(c)(7) organizations, are the club's income from its usual activities and include:

- Charges;
- Admissions;
- Membership fees;
- Dues;
- Assessments; and
- Investment income (such as dividends, rents, and similar receipts), and normal recurring capital gains on investments.

Gross receipts for this purpose don't include:

- Capital contributions (see Regulations section 1.118-1),
- Initiation fees, or
- Unusual amounts of income (such as the sale of the clubhouse).



College fraternities or sororities or other organizations that charge membership initiation fees, but not

annual dues, must include initiation fees in their gross receipts.

Section 501(c)(15)

If any section 501(c)(15) insurance company (other than life insurance) meets both parts of the following test, then the company can file Form 990 (or Form 990-EZ, if applicable).

1. The company's gross receipts must be equal to or less than \$600,000.
2. The company's premiums must be more than 50% of its gross receipts.

If the company didn't meet this test and the company is a mutual insurance company, then it must meet the *Alternate test* to qualify to file Form 990 (or Form 990-EZ, if applicable). Insurance companies that don't qualify as tax exempt must file Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return; or Form 1120, U.S. Corporation Income Tax Return, as taxable entities for the year. See Notice

2006-42, 2006-19 I.R.B. 878, available at IRS.gov/irb/2006-19_IRB/ar08.html.

Alternate test. If any section 501(c)(15) insurance company (other than life insurance) is a mutual insurance company and it didn't meet the above test, then the company must meet both parts of the following alternate test.

1. The company's gross receipts must be equal to or less than \$150,000.
2. The company's premiums must be more than 35% of its gross receipts.

If the company doesn't meet either test, then it must file Form 1120 or 1120-PC (if the company isn't entitled to insurance reserves) instead of Form 990 or 990-EZ.



The alternate test doesn't apply if any employee of the mutual insurance company or a member of the employee's family is an employee of another company that is exempt under section

501(c)(15) (or would be exempt if this provision didn't apply).

Gross receipts. To determine whether a section 501(c)(15) organization satisfies either of the above tests described in *Appendix C*, figure gross receipts by adding:

1. Premiums (including deposits and assessments) without reduction for return premiums or premiums paid for reinsurance;
2. Gross investment income of a non-life insurance company (as described in section 834(b)); and
3. Other items that are included in the filer's gross income under subchapter B, chapter 1, subtitle A, of the Code.

This definition doesn't, however, include contributions to capital. For more information, see Notice 2006-42.

Premiums. Premiums consist of all amounts received as a result of entering into an insurance contract. They are reported on Form 990, Part VIII, line 2, or on Form 990-EZ, Part I, line 2.

Anti-abuse rule. The anti-abuse rule, found in section 501(c) (15)(C), explains how gross receipts (including premiums) from all members of a controlled group are aggregated in figuring the tests described earlier.

Appendix D: Public Inspection of Returns

Some members of the public rely on Form 990 or 990-EZ as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its returns.

An organization's completed Form 990 or 990-EZ is available for public inspection as

required by section 6104. Schedule B (Form 990) is open for public inspection for section 527 organizations filing Form 990 or 990-EZ, and for organizations filing Form 990-PF. For other organizations that file Form 990 or 990-EZ, the names and addresses of contributors listed on Schedule B (Form 990) aren't required to be made available for public inspection. The instructions for Schedule B (Form 990) describe which filers for Form 990-EZ are not required to provide contributor names and addresses. All other information reported on Schedule B (Form 990), including the amount of contributions, the description of noncash contributions, and any other information, is required to be made available for public inspection unless it clearly identifies the contributor. Form 990-T filed after August 17, 2006, by a section 501(c)(3) organization to report any unrelated business income is also available for public inspection and disclosure.

Note. Any annual return required to be filed electronically under section 6033(n) will be made available by the Secretary to the public as soon as practicable in a machine-readable format.

Through the IRS

Use Form 4506-A to request a copy of an exempt or political organization's return, report, notice, or exemption application.

The IRS can provide electronic copies of exempt organization returns. Requesters can order the complete set (for example, all Forms 990 and 990-EZ or all Forms 990-PF filed for a year) or a partial set by state or by month. Complete information, including the cost, is available on the IRS website. Search Copies of EO Returns Available at [IRS.gov/Charities-Non-Profits/Copies-ofEO-Returns-Available](https://www.irs.gov/Charities-Non-Profits/Copies-ofEO-Returns-Available).

The IRS generally can't disclose portions of an exemption application relating to trade

secrets, etc. The IRS can, however, disclose the names and addresses of contributors of section 527 organizations filing Form 990 or 990-EZ and for organizations that file Form 990-PF. For other organizations that file Form 990 or 990-EZ, the names and addresses of contributors aren't required to be made available for public inspection. See the Instructions for Schedule B (Form 990) for more information about the disclosure of that schedule.

Form 990-T must be made available for public inspection by both the IRS and section 501(c)(3) organizations under Notice 2008-49, 2008-20 I.R.B. 979.

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

A private foundation's Form 990-PF can only be requested for tax years beginning after March 13, 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.

Note. The publicly available data on electronically filed Forms 990 is now available in a machine-readable format through Amazon Web Services (AWS). The publicly available data doesn't include donor information or other personally identifiable information.

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 Form 8871, Political Organization Notice of Section 527 Status; Form 8872, Political Organization Report of Contributions and Expenditures; Form 990; or Form 990-EZ available for public inspection in the same manner as annual information returns of section 501(c) organizations. See *Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations* next. Generally, Forms 8871 and 8872 are available for inspection and printing in the Charities & Nonprofits section of the IRS website at [IRS.gov/Charities-&-Non-Profits](https://www.irs.gov/Charities-&-Non-Profits).



A section 527 political organization (and an organization filing Form 990-PF) must disclose their Schedule B

(Form 990). See the Instructions for Schedule B (Form 990). The penalties discussed in General Instructions G also apply to section 527 political organizations (Rev. Rul. 2003-49, 2003-20 I.R.B. 903).

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 such copy in person or in writing (except as provided in Regulations sections 301.6104(d)-2 and (d)-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 (such as 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 does not 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.



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), and

- An exact copy of Form 990-T if one is filed by a 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 schedules, 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, schedules, 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 such 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 are 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 (such as day

care, health care, or 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 such copies to a requester on the day the request is made, except for unusual circumstances (see 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 fifth 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, such as 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 a principal, regional, or district office of the organization, and delivered by mail, electronic mail, facsimile, or a private delivery service, as defined in section 7502(f); 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 electronic mail or facsimile	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 electronic mail (the material is provided on the date the organization successfully transmits the electronic mail).
------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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 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 about 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

such 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 that 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 schedules for each local or subordinate organization included in the group return, the local or subordinate organization receiving the request can omit any schedules 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.

In a case where the 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. In such a case, the organization can charge the requester for copying and actual postage

costs only 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 in *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 such requests in the time and manner specified in *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 \$20 for each day that inspection wasn't permitted, up to a maximum of \$12,000 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 \$12,000 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 annual information return widely available must nevertheless

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 next.

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 web page, if applicable). If the request is made in person, the organization

must provide such 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

If the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) 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 constitutes 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, regardless of whether the Office of Associate Chief Counsel (EEE) 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 (EEO). See Rev. Proc. 2023-1, 2023-1 I.R.B. 1, available at [IRS.gov/irb/2023-01_IRB](https://www.irs.gov/irb/2023-01_IRB).

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 (EEO) 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: 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 such 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

The vast majority of 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:

- Presidents, chief executive officers, or chief operating officers; and
- 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.
- A supported organization of a section 509(a)(3) supporting organization, and 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 *Highly Compensated Employee Benefits—Limitation Amounts*) 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 engaging in transactions 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

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 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 can 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 such benefit, but see the special rules later 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, 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, and
- 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 such person. In the case of a trust, a substantial contributor also means the creator of the 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? An excess benefit transaction

occurs on the date the disqualified person receives the economic benefit from the organization for federal income tax purposes. 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 under a written contract that was binding on September 13, 1995, and at all times 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 later in *What benefits are disregarded*). 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 organization produces a signed written employment contract;
- The organization reports the benefit as compensation on an original Form W-2, 1099, 990, or 990-EZ, or on an amended form filed before the start of an IRS examination; or
- 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)).