

Highlights

Schedule L is to be used by organizations filing Form 990 or 990-EZ to report certain transactions with interested persons.

- Part I involves excess benefit transactions, Part II involves loans, Part III involves grants, and Part IV involves certain business and financial relationships.
- Form 990-EZ filers are required to complete Part I if they respond “yes” to line 40b regarding an excess benefit transaction, but are not required to complete the other Parts of the Schedule

The instructions clarify which Part to report a transaction on if it might be described in multiple parts, to avoid duplicate reporting.

Because there has been considerable confusion regarding reporting on line 75b of the current Form 990, and characterization of a transaction as an excess benefit transaction may have serious consequences for the disqualified person, certain organization managers, and the organization, the instructions caution organizations to review the instructions and other materials on section 4958 before responding to the excess benefit questions.

Part IV business and financial relationship questions contain certain clarifying instructions, including:

- Reporting is to be based upon whether the organization made payments in connection with the transaction or relationship during the year
- Provides a “large board” exception for organizations with large boards that rely on an executive committee for ongoing governance decisions
- Establishes a \$10,000 per transaction threshold before requiring reporting in the Part IV table, and allows flexibility to separately report or aggregate certain transactions by type in the table

2008 Schedule L (Form 990 or 990-EZ) Instructions

Transactions with Interested Persons

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Schedule

Schedule L (Form 990 or 990-EZ) is used by an organization that files Form 990 or Form 990-EZ to provide information on certain financial transactions or arrangements between the organization and disqualified persons under section 4958 or similar interested persons.

Who Must File

The following chart sets forth which organizations must complete all or a part of Schedule L and attach Schedule L to Form 990 or Form 990-EZ.

Type of filer:	Answering "Yes" to:	Must file:
501(c)(3) or (4) organization	Form 990, Part IV, line 25a or 25b (regarding excess benefit transactions)	Schedule L, Part I
501(c)(3) or (4) organization	Form 990-EZ, Part V, line 40b (regarding excess benefit transactions)	Schedule L, Part I
All organizations	Form 990, Part IV, line 26 (regarding loans)	Schedule L, Part II
All organizations	Form 990-EZ, Part V, line 38a (regarding loans)	Schedule L, Part II
All organizations	Form 990, Part IV, line 27 (regarding grants)	Schedule L, Part III
All organizations	Form 990, Part IV, line 28a (regarding business transactions)	Schedule L, Part IV
All organizations	Form 990, Part IV, line 28b (regarding business transactions)	Schedule L, Part IV
All organizations	Form 990, Part IV, line 28c (regarding business transactions)	Schedule L, Part IV

Specific Instructions

Part I Excess Benefit Transactions

(To be completed by section 501(c)(3) and (c)(4) organizations.)

Line 1. For each excess benefit transaction involving an organization described in section 501(c)(3) or 501(c)(4):

2008 Schedule L (Form 990 or 990-EZ) Instructions - Draft
April 7, 2008

- Identify the disqualified person(s) that received an excess benefit in the transaction;
- Identify the organization manager(s), if any, that participated in the transaction, knowing that it was an excess benefit transaction;
- Describe the transaction; and
- State whether the transaction has been corrected.

Excess benefit transaction. An excess benefit transaction is a transaction in which an applicable tax-exempt organization directly or indirectly provides to or for the use of a disqualified person an economic benefit the value of which exceeds the value of the consideration received by the organization for providing such benefit. Applicable tax-exempt organizations are generally limited to organizations which (without regard to any excess benefit) are 501(c)(3) public charities or 501(c)(4) organizations, or organizations that had such status at any time during the 5-year period ending on the date of the excess benefit transaction.

Section 501(c)(3) and 501(c)(4) organizations should refer to the instructions for Form 990 Part IV, line 25 (or Form 990-EZ Part V, line 40b) before completing Schedule L, Part I. For more information on excess benefit transactions and section 4958, see Publication 557.

Line 2. Enter the amount of taxes imposed on organization managers and/or disqualified persons under section 4958, whether or not assessed, unless abated. Form 4720 must be filed to report and pay the tax on excess benefit transactions.

Part II Loans to and from Interested Persons

Report details on loans, including salary advances and other advances and receivables (referred to collectively as "loans"), as described in Form 990, Part IV, line 26 or Form 990-EZ, Part V, line 38a. Report only loans between the organization and interested persons that are outstanding as of the end of the organization's tax year. Report each loan separately. For Form 990 filers, interested persons are as follows:

- Current or former officers, directors, trustees, key employees, and five highest compensated employees listed in Form 990 Part VII are interested persons for all organizations.
- For organizations described in section 501(c)(3) or (4), disqualified persons as described in section 4958(f)(1) are also interested persons.
- For organizations described in section 509(a)(3), disqualified persons as described in section 4958(c)(3)(B) are also interested persons.

For Form 990-EZ filers, interested persons are current officers, directors, trustees, and key employees listed in Form 990-EZ, Part IV.

Do not report the following in Part II:

- excess benefit transactions reported in Schedule L, Part I
- advances under an accountable plan as described in the Schedule J, Part II instructions
- pledges receivable that would qualify as charitable contributions when paid

2008 Schedule L (Form 990 or 990-EZ) Instructions - Draft
April 7, 2008

- accrued but unpaid compensation owed by the organization
- loans from a credit union made to an interested person on the same terms as offered to other members of the credit union
- receivables outstanding that were created in the ordinary course of the organization's business on the same terms as offered to the general public (such as receivables for medical services provided by a hospital to an officer of the hospital)

In addition to loans originally made between the organization and interested person, report also loans originally between the organization and a third party or between an interested person and a third party that were transferred so as to become a debt outstanding between the organization and interested person.

Column (a). Identify the interested person that was the debtor or creditor on the loan. Also, state the organization's purpose for engaging in the transaction (e.g., "compensation package"). Use Schedule O if additional space is needed.

Column (c). State the original dollar amount owed (the loan principal).

Column (d). State the balance due as of the end of the organization's tax year, including outstanding principal, accrued interest, and any applicable penalties and collection costs. For Form 990 filers, the sum total indicated in Column (d) must equal the total of Form 990, Part X (Balance Sheet), Lines 5 and 6 (for amounts owed to the organization), and Line 22, Column (B) (for amounts owed by the organization).

Column (e). Answer "Yes" if any payment by the debtor was past due as of the end of the organization's tax year, or if the debtor otherwise is in default under the terms and conditions of the loan.

Column (f). State whether the organization's governing body (or a committee of the governing body) approved the loan transaction.

Column (g). State whether the loan is evidenced by a promissory note or other written agreement signed by the debtor.

Part III Grants or Assistance Benefiting Interested Persons

Report each grant or similar economic assistance (including provision of goods, services, or use of facilities) provided by the organization to any interested person and for which the interested person is not expected under the terms of the arrangement to provide services, property, or other consideration except in furtherance of the purposes of the grant. Examples of grants are scholarships, fellowships, internships, prizes, and awards. For purposes of Part III, an "interested person" means an officer, director, trustee, key employee, substantial contributor as defined in section 507(d)(2), or a related person. A "related person," in turn, means:

- a member of the organization's selection committee,
- a family member of any of the organization's officers, directors, trustees, key employees, *substantial contributors* or members of the organization's selection committee,

2008 Schedule L (Form 990 or 990-EZ) Instructions - Draft
April 7, 2008

- a 35% controlled entity (as defined in section 4958(f)(3)) of any of the organization's officers, directors, trustees, key employees, substantial contributors or members of the organization's selection committee, or
- an employee of a substantial contributor or 35% controlled entity (or the employee's child).

Do not report the following in Part III:

- excess benefit transactions reported in Schedule L, Part I
- loans reported (or not required to be reported) in Schedule L, Part II
- business transactions for full and fair consideration engaged in to serve the direct and immediate needs of the organization, such as payment of compensation to an employee or consultant in exchange for services of comparable value
- section 132 fringe benefits (described in the Schedule J instructions)
- grants to a substantial contributor's employees (and their children) awarded on an objective and nondiscriminatory basis based on pre-established criteria and review by a selection committee, as described in Regulations section 53.4945-4(b).

For each grant or assistance, identify the interested person, describe the relationship between the interested person and the organization, and state the amount of the grant or the type of assistance (including estimated value). Use Schedule O if additional space is needed.

Part IV Business Transactions Involving Interested Persons

Report in Part IV direct and indirect business transactions for which payments were made during the organization's tax year between the organization and a current or former officer, director, trustee, or key employee listed in Form 990, Part VII, Section A. Indirect business transactions are transactions between the organization and a person related to a current or former officer, director, trustee, or key employee reported in Form 990, Part VII, Section A, in any of the following ways:

- A family member of a current or former officer, director, trustee, or key employee listed in Form 990, Part VII, Section A
- An entity more than 35% owned, directly or indirectly, by (1) one or more current or former officers, directors, trustees, or key employees listed in Form 990, Part VII, Section A, and/or (2) their family members, whether individually or collectively
- An entity (other than an entity with 501(c)(3) status or the same exempt status as the organization) of which a current or former officer, director, trustee, or key employee listed in Form 990, Part VII, Section A was serving at the time of the transaction as (1) an officer, (2) a director, (3) a trustee, (4) a key employee, (5) a partner or member with any ownership interest if the entity is treated as a partnership, or (6) a shareholder with any ownership interest if the entity is a professional corporation

An indirect business transaction also includes a transaction with any management company of which a former officer, director, trustee, or key employee of the organization

2008 Schedule L (Form 990 or 990-EZ) Instructions - Draft
April 7, 2008

(within the last five tax years, whether or not listed in Form 990, Part VII, Section A) is a direct or indirect 35% owner, or an officer, director, trustee, or key employee.

An organization with more than 20 voting directors or trustees in its governing body and with an executive committee that possesses delegated powers to act on behalf of the governing body may disregard for purposes of Part IV all current and former directors or trustees that are not current (1) members of the board's executive committee, or (2) officers, key employees, or highest compensated employees of the organization.

In reporting transactions in Part IV, the organization is not required to report individual transactions that did not exceed \$10,000 during the year. For this purpose, aggregate all payments during the tax year between the parties under the same contract or transaction. For instance, report transactions with a law firm if a director of the organization is a partner of the law firm (or a shareholder if the law firm is a professional corporation) and the law firm bills the organization for more than \$10,000 in the aggregate during the organization's tax year under a contract for a particular case or legal matter.

The organization may aggregate multiple individual transactions involving more than \$10,000 between the same parties, or list them separately, in Part IV. If aggregation is chosen, report the aggregate amount in Column (c) and describe the various types of transactions (e.g., "consulting," "rental of real property") in Column (d). Use Schedule O if additional space is needed.

Do not report the following in Part IV:

- excess benefit transactions reported in Schedule L, Part I
- loans reported (or not required to be reported) in Schedule L, Part II
- grants and other assistance reported (or not required to be reported) in Schedule L, Part III

If the organization answered "Yes" to Part IV, Lines 28a, 28b, or 28c, but no business transaction is required to be reported in the Part IV table under these instructions, state "All transactions are below reporting threshold" in Column (a) of the table.

Business transactions. Business transactions include but are not limited to contracts of sale, lease, license, and performance of services, whether initiated during the organization's tax year or ongoing from a prior year. Business transactions also include joint ventures, whether new or ongoing, in which the profits or capital interest of the organization and the interested person each exceeds 10%. The organization's charging of membership dues to its officers, directors, etc. are not considered business transactions for purposes of Part IV.

Ownership. Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, beneficial interest in a trust, or control of a nonprofit organization. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity doing business with the organization); there may be ownership through multiple tiers of entities. The constructive ownership rules of section 267(c) apply for this purpose.

2008 Schedule L (Form 990 or 990-EZ) Instructions - Draft
April 7, 2008

Column (c). The dollar amount of the transaction is the cash and/or fair market value of other assets and services provided by the organization during the tax year, net of reimbursement of expenses.

Column (d). Describe the transaction(s) by type, such as employment or independent contractor arrangement, rental of property, or sale of assets.

Column (e). State "Yes" if all or part of the consideration paid by the organization is based on a percentage of revenues of the organization. For instance, state "Yes" if a management fee is based on a percentage of revenues, or a legal fee owed to outside attorneys by a public interest law firm is a percentage of the amount collected.

DRAFT