

Form 1023 – Frequently Asked Questions

A - Background Information About Form 1023

1. How can I get a copy of Form 1023?

[Form 1023](#) and its [instructions](#) are available for download at [Forms and Publications](#). The revised printed Package 1023 (Form 1023 and Instructions for Form 1023) is available by calling toll-free 1-800-829-3676.

2. How can I get more information about the Form 1023?

Information about applying for recognition of exemption is available on the IRS website at [Tax Information for Charities & Other Non-Profits](#). In addition, an organization may also contact a Customer Account Services representative toll-free at 1-877-829-5500.

B - General Information About Form 1023/Questions About Part I, Form 1023

1. What is included in the Form 1023 package?

The Form 1023 package includes (1) [Form 1023](#), (2) Checklist for Form 1023, (3) [Instructions for Form 1023](#), and (4) [Form 5768, Election/Revocation of Election by an Eligible Section 501\(c\)\(3\) Organization To Make Expenditures To Influence Legislation](#).

2. Must an organization obtain an Employer Identification Number to apply for exemption?

An organization may not file Form 1023 unless it already has an Employer Identification Number (EIN).

An organization can obtain an EIN [over the telephone, via fax, or through the mail](#). You can also apply [on-line](#).

3. Can an organization use a *mailing address* on its application?

Yes. An organization may use a *mailing address* in Part I, Line 3, instead of a street address. This may be desirable to protect its privacy and that of its employees and clients, given that Form 1023 is subject to [public disclosure](#) (for a battered women's shelter, for example).

4. What requirements apply if an organization will be represented by an attorney or other authorized representative?

Someone other than an attorney of record, officer, director or employee may represent an organization in connection with its application for exemption. The IRS cannot discuss an application with such a person, however, unless the organization submits [Form 2848](#), *Power of Attorney and Declaration of Representative*, or [Form 8821](#), *Tax Information Authorization*.

5. Why does Form 1023 ask for information about payments to third parties for assistance in creating the organization?

Obtaining information about potential tax avoidance transactions is one of the goals of Form 1023. These transactions may include improper business dealings between the applicant and its top officials, excessive compensation arrangements, fundraising involving such areas as vehicle donations and conservation easements, and foreign grants and operations.

Tax advisors who promote abusive tax avoidance transactions are subject to [penalties](#).

6. Why does Form 1023 request a fax number and e-mail address?

A fax number provides an alternative means for contacting an organization or its representative about a pending application. In addition, the IRS sometimes offers educational materials and programs for tax-exempt organizations, and may use e-mail to distribute this information. Providing this information on Form 1023 is optional, however.

7. Does it matter if an organization is formed in a country other than the United States?

An organization may qualify for exemption under section 501(c)(3) even if it is formed and/or conducts its activities in a country other than the United States. Note, however, that contributions to an organization formed in a foreign country are generally not deductible as charitable contributions for federal income tax purposes except pursuant to a treaty between the other country and the United States. (For example, contributions to Canadian charities may be deductible, while contributions to charities based in most other countries are not.)

Form 1023 asks whether an organization was formed in a country other than the United States to help identify charities based or operating in countries that may present tax risk issues.

8. Can you modify the fillable portion of the electronic Form 1023 file so we can add the phrase *see attachment*?

Many organizations simply write or type in the words *see attachment*. Others provide attachments keyed to the Form 1023 numbering system.

We are working on a truly electronic version of Form 1023. When completed, this will significantly increase your ability to provide information to us and our ability to provide instructions.

C - Organizational Structure and Organizing Documents

1. What kinds of organizations can file Form 1023?

Organizations that may qualify for exemption under section 501(c)(3) include corporations, unincorporated associations and trusts. A partnership may not qualify for exemption and therefore may not file Form 1023.

2. Can a limited liability company file Form 1023?

A limited liability company that files Form 1023 is treated as a corporation rather than a partnership. As a corporation, it may file Form 1023. Note, however, that a limited liability company should not file an exemption application if it wants to be treated as a disregarded entity by its tax-exempt parent. The IRS will only recognize a limited liability company under section 501(c)(3) if all its members are section 501(c)(3) organizations.

3. How does the IRS process an application submitted by an organization that does not have the required organizational structure?

If an organization does not have the required organizational structure, the IRS will return its application (the user fee is generally not refundable, however). If the organization can create the required structure within the time specified by the IRS, it can resubmit the application without penalty or paying an additional user fee.

4. What provisions must be in an organization's organizing document for it to qualify for exemption under section 501(c)(3)?

A charity's organizing document must limit the organization's purposes to exempt purposes set forth in section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that do not further those purposes. This requirement may be met if the purposes stated in the organizing document are limited by reference to section 501(c)(3). In addition, an organization's assets must be permanently dedicated to an exempt purpose. That means that if an organization dissolves, its assets must be distributed for an exempt purpose described in section 501(c)(3), or to the federal government or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, the organizing document should contain a provision insuring their distribution for an exempt purpose if the organization dissolves. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its organizing document includes a provision ensuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, see [Sample Articles](#).

If the organizing document does not contain these provisions, an organization should amend it before submitting its exemption application. [State officials](#) can provide more information about how to amend organizing documents.

D - Narrative of Activities

1. What activities should be described in Part IV of Form 1023?

An organization must describe completely and in detail its past, present, and planned activities, that are substantial. It can refer to other parts of the application rather than repeat information provided elsewhere.

An organization should describe either actual or planned activities, rather than possible or speculative programs. For example, an organization may plan to operate an after-school homework club, and should describe that activity in its application. The organization's director may have brainstormed about possible scholarship programs or creating a youth orchestra. The application need not describe the scholarship or orchestra program because these are *speculative*.

2. How much detail should be provided in the narrative description of activities?

The narrative description, including information referenced in other parts of the application, should include information that answers the following questions:

- What is the activity?
- Who conducts the activity?
- When is the activity conducted?
- Where is the activity conducted?
- How does the activity further the organization's exempt purposes?
- What percentage of the organization's total time is allocated to the activity?
- How is the activity funded?

If an organization has a website, it may attach paper copies of relevant materials to support the narrative description of activities.

E - Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Employees and Independent Contractors

1. Why does Form 1023 request detailed information about compensation and other financial arrangements with officers, directors, trustees, employees, and independent contractors?

Part V of Form 1023 asks questions about compensation and other financial arrangements with officers, directors, trustees, highly compensated employees, and highly compensated independent contractors (including certain related parties). These questions are aimed at determining whether benefits paid to such individuals are appropriate, that is, whether they are consistent with exempt status under section 501(c)(3).

2. What information must be submitted about compensation of key individuals?

Tracking the current Form 990, [Return of Organization Exempt from Income Tax](#), Form 1023 asks the applicant to list the name, title, mailing address and total compensation for officers, directors and trustees; employees receiving more than \$50,000 annually; and independent contractors receiving more than \$50,000 annually. It defines compensation as all income including salary, wages, deferred compensation, retirement benefits, fringe benefits, educational benefits, low interest loans, payment of personal expenses, and bonuses. It asks about family and business relationships and transactions that could

indicate impermissible private benefit. It inquires about conflict of interest policies or practices and references the sample policy in Appendix A. It asks the applicant to disclose transactions with related parties, and how compensation is determined to be reasonable.

3. What type of information must be provided when describing the qualifications and duties of officers, directors, trustees, five highest compensated employees and five highest compensated independent contractors?

Volunteer officers, directors and trustees may serve because they believe in an organization's mission without having a specific area of expertise. In this situation, the individual's history relevant to his or her involvement with the organization would be appropriate. Other volunteer officers, directors and trustees may bring specific expertise. In this situation, you should describe specific expertise. We ask for information about the qualifications and duties of volunteer officers, directors and trustees to help inform us about whether the organization is likely to serve impermissible private interests.

The following are examples of descriptions of qualifications and duties for volunteers:

- Mr. Jones is a volunteer director. He is a recently retired high school English teacher. He is keenly interested in learning about environmental issues and in helping us to accomplish our mission of protecting our local community's water resources. Mr. Smith is the organization's recording secretary. His duties are spelled out in our bylaws, and include attending meetings of our board of directors and voting on board decisions.
- Ms. Smith is a volunteer director. She is a partner in the for-profit XYZ firm that specializes in analyzing and reporting on water quality issues for local governments in our state. Ms. Smith has extensive knowledge about water quality issues. Her training includes undergraduate and graduate work in water quality issues at ABC College. Ms. Smith is the organization's vice president. Her duties are spelled out in our bylaws, and include attending meetings of our board of directors and voting on board decisions. Pursuant to our conflict of interest policy, Ms. Smith has agreed that she will not vote on any matter involving a conflict of interest between her duties as a director and her position with XYZ.

Organizations should provide information about the qualifications and duties of its paid officers, directors, trustees, five highest compensated employee, and five highest compensated independent contractors who receive or will receive compensation of more than \$50,000 per year. In

this situation, a description of the specific training or other history that resulted in employment of these individuals together with the duties they are expected to perform would be appropriate to help inform us about whether the organization is likely to be overcompensating any of these individuals.

- Mr. Ortiz is a member of the board of directors. He is also our president. His qualifications include graduating with a BS degree in general science from ABC College. He served as a fireman for ten years with the City of X during which time he rose to the rank of assistant fire chief and attended numerous clinics on fire prevention. He held the position of executive assistant to the president of the Y nonprofit organization immediately before joining our organization. His duties are spelled out in our bylaws, and include attending meetings of our board of directors and voting on board decisions.

Summaries of relevant qualifications and duties are usually sufficient for volunteers or paid officers, directors, or trustees. However, if an organization has an unusual compensation arrangement in terms of amounts or methods of computing compensation, descriptions of qualifications and duties would include the special circumstances that explain the arrangements.

4. What is the purpose of the conflict of interest policy?

Charitable organizations are frequently subject to intense public scrutiny, especially where they appear to have inappropriately benefited their officers, directors or trustees. The IRS also has an oversight role with respect to charitable organizations. An important part of this oversight is providing organizations with strategies that will help avoid the appearance or actuality of private benefit to individuals who are in a position of substantial authority. The recommended conflict of interest policy is a strategy we encourage organizations to adopt as a means to establish procedures that will offer protection against charges of impropriety involving officers, directors or trustees.

A conflict of interest occurs where individuals' obligation to further the organization's charitable purposes is at odds with their own financial interests. For example, a conflict of interest would occur where an officer, director or trustee votes on a contract between the organization and a business that is owned by the officer, director or trustee. Conflicts of interest frequently arise when setting compensation or benefits for officers, directors or trustees. A conflict of interest policy is intended to help ensure that when actual or potential conflicts of interest arise, the organization has a process in place under which the affected individual will advise the

governing body about all the relevant facts concerning the situation. A conflict of interest policy is also intended to establish procedures under which individuals who have a conflict of interest will be excused from voting on such matters.

Apart from any appearance of impropriety, organizations will lose their tax-exempt status unless they operate in a manner consistent with their charitable purposes. Serving private interests more than insubstantially is inconsistent with accomplishing charitable purposes. For example, paying an individual who is in a position of substantial authority excessive compensation serves a private interest. Providing facilities, goods, or services to an individual who is in a position of substantial authority also serves a private interest unless the benefits are part of a reasonable compensation arrangement or they are available to the public on equal terms and conditions.

5. Are bonuses provided through retirement plans considered non-fixed payments?

Bonuses provided through retirement plans, such as those provided under Code sections 403(b) or 457, are treated as non-fixed payments for purposes of lines 6a and 6b (Part V, Form 1023).

6. What does an organization that does not pay compensation report in Part V?

The questions in Part V are aimed at determining whether benefits provided to officers, directors, and trustees are consistent with exempt status. If no compensation is paid, then the answer to Part V, Question 1a is none. If individuals are reimbursed for expenses, however, then this information should be provided. The remainder of Part V asks about various types of relationships between the organization and its governing members. Answer these questions even if no compensation is provided; we are concerned that an organization informs us about the possibility of private benefit to persons who are in a position of control.

F - Members and Individuals/Organizations that Receive Benefits

1. Why does Form 1023 request detailed information about an organization's members and other individuals and organizations that receive benefits from it?

Form 1023, Part VI, asks whether in conducting its exempt functions, an organization limits its programs to certain groups. It also asks whether individuals related to key individuals are eligible to receive benefits from the organization. The purpose of these questions is to verify that an

organization operates for public purposes and not for the private benefit of an organization's members or other private individuals or organizations.

2. What information must be submitted about benefits to members and other individuals/organizations that receive benefits from an organization?

In addition to describing the benefits it provides to members, an organization must describe its requirements for membership and the relationship between individuals receiving benefits and key individuals within the organization.

G - Organization's History

1. Why does Form 1023 ask for information about successor organizations?

Line 1, Part VII, asks whether an organization is a successor (as defined in the instructions) to another organization, for-profit or non-profit. If an organization answers "yes," it must complete Schedule G, which requests detailed information about the predecessor organization, transfers of assets, and any continuing relationship. Generally speaking, the purpose of Schedule G is to obtain information about whether a transaction creating a successor organization resulted in benefit to private shareholders or individuals associated with the predecessor organization.

2. Why does Form 1023 ask for information about an organization applying more than 27 months after the month it was legally formed?

In general, an organization must file its exemption application within 27 months from the end of the month in which it was formed. If it does so, it may be recognized as exempt back to the date of formation. If an organization files its exemption application after the 27-month deadline, exempt status may only be recognized from the filing date forward.

Exceptions to this general rule apply. If an organization answers yes to Line 2, Part VII, indicating that it filed late, it is directed to Schedule E, which asks questions to establish if it is accepted from the general rule.

H - Specific Activities

1. What is the purpose of the questions about specific activities in Part VIII of Form 1023?

Form 1023 consolidates in one section all questions regarding past, current, or planned activities in commonly recurring areas. These

questions ask for information about prohibited and restricted activities, including impermissible private benefit; information to help the organization establish that its activities will otherwise further exempt purposes; and information relating to the requirement to file annual returns or other tax compliance responsibilities. They then ask the applicant to explain responses, or complete a schedule providing additional details. Specific activities covered in Part VIII are the following:

- Political campaign intervention (Line 1)
- Legislative activities (Line 2)
- Gaming activities, including bingo (Line 3)
- Certain fundraising activities (Line 4)
- Affiliation with governmental units (Line 5)
- Economic development activities (Line 6)
- Third party development or management contracts (Line 7)
- Joint ventures with persons other than section 501(c)(3) organizations (Line 8)
- Childcare activities (Line 9)
- Ownership or other rights in intellectual property (Line 10)
- Accepting contributions of real property, conservation easements, closely held securities, intellectual property, vehicles, or collectibles (Line 11)
- Activities in foreign countries (Line 12)
- Making grants, loans, or other distributions to organizations (Line 13)
- Making grants, loans, or other distributions to foreign organizations (Line 14)
- Close connections with any organizations (Line 15)
- Applying for exemption as a cooperative hospital service organization under Code section 501(e) (Line 16)
- Applying for exemption as a cooperative service organization of operating educational organizations under Code section 501(f) (Line 17)
- Applying for exemption as a charitable risk pool under section 501(n) (Line 18)
- Operating a school (Line 19 and Schedule B)
- Providing hospital or medical care (Line 20 and Schedule C)
- Providing low income housing or housing for the elderly or handicapped (Line 21 and Schedule F)
- Providing scholarships, fellowships, educational loans, or other educational grants to individuals (Line 22 and Schedule H)

2. How far in the future do we need to project fundraising efforts?

Organizations must describe their actual or planned fundraising programs rather than possible or speculative programs, on line 4a.

3. Must organizations report written or oral contracts for fundraising activities with their own employees?

No. The intent of this question is to provide information about fundraising agreements with individuals (or organizations) other than fundraising undertaken by employees of the organization. However, if an employee of the organization provides fundraising services apart from his or her duties as an employee then information about that fundraising agreement must be provided.

4. What is the purpose of asking about fundraising efforts in states and local jurisdictions, including whether it is for the applicant organization or for another organization?

This question is part of a series of questions aimed at having an organization provide information about where, how, and with whom it conducts fundraising. The intent of this question is for organizations to describe their actual or planned fundraising efforts rather than possible or speculative programs. Although fundraising provides an important opportunity for organizations to inform the public about their programs and gather financial support, it also provides opportunities for abuses. Being informed of the entire range of fundraising efforts in which an organization is involved, the IRS can exercise appropriate oversight as part of the application process.

Fundraising efforts conducted on websites may be described as not being limited to any particular state or local jurisdiction.

5. How far reaching is the question about whether an organization has a close connection with any organizations?

This question is aimed at developing information about separately established organizations that have (or plan to have) a relationship involving sharing or coordinating finances, employees, or activities.

For example, an organization filing Form 1023 that was created by a section 501(c) (6) business league (at the same time that the business league created a section 527 political action committee) to perform the business league's charitable activities would answer yes. It must then describe its relationship with the business league and the political action

committee, including precautions it will undertake to ensure that its conduct remains consistent with its exempt status.

Where there are no current or planned relationships between the organization and another organization (other than the fact that one or more individuals created or exercise substantial influence over both organizations), the organization would answer *no*.

6. Part VIII asks about intellectual property. This question is very broad - as written, it could include even a charity's brochures or donor list. What do you want?

We expect a general explanation about an organization's involvement in intellectual property, defined in the instructions as including patents, copyrights, trade names and formulas. We don't necessarily want the actual material, especially if you do not want it available to the general public, because approved application materials are subject to [public disclosure](#).

I - Financial Data

1. Why does Form 1023 request detailed financial data about an organization applying for exemption?

Part IX of Form 1023 serves several purposes, including securing the information needed to determine whether an organization is (or will be) [publicly supported](#), and therefore not a [private foundation](#). A complete picture of an organization's past, current, and future activities and purposes must include both narrative and financial descriptions.

2. What financial data is requested by Form 1023?

Part IX-A (*Statement of Revenue and Expenses*) requires the organization to provide actual or projected financial information (*e.g.*, budget) for three or four years (depending on how many years it has existed). Part IX-B requires a balance sheet for the organization's most recently completed tax year. A balance sheet is a snapshot of assets, liabilities and fund balances (net assets) on a particular date. If an organization has not completed a tax year, it should provide a statement of actual assets, liabilities, and fund balances (net assets) based on its most current information.

An [errata sheet](#) to Form 1023 provides detailed instructions on completing Part IX

3. For what periods must the Statement of Revenue and Expenses in Part IX be completed?

The tax years for which financial information must be provided for the Statement of Revenues and Expenses in Part IX depends on the number of tax years an applicant has completed since it was formed. An organization's tax year is its annual accounting period.

The following examples explain how to determine the number of years an organization has completed since it was incorporated or formed.

Example 1: X was incorporated as a nonprofit organization on June 4, 2010. It selected an annual accounting period that ends December 31. Therefore, its first tax year is June 4, 2010 through December 31, 2010. Its second tax year is January 1, 2011 through December 31, 2011. Its third tax year is January 1, 2012 through December 31, 2012. Its fourth tax year is January 1, 2013 through December 31, 2013.

Example 2: Y was formed as a trust on June 4, 2010. It selected an annual accounting period that ends June 30. Therefore, its first tax year is June 4, 2010 through June 30, 2010. Its second tax year is July 1, 2010 through June 30, 2011. Its third tax year is July 1, 2011 through June 30, 2012. Its fourth tax year is July 1, 2012 through June 30, 2013.

If an organization has been in existence for less than 5 years, it must complete the schedule in Part IX for each year in existence and provide projections of likely revenues and expenses based on a reasonable and good faith estimate of future finances for a total of:

Three years of financial information if it has not completed one tax year, or
Four years of financial information if it has completed one tax year.
If in existence for 5 years or more, it must complete the schedule for the most recent 5 tax years. It will need to provide a separate statement that includes information about the most recent 5 years because the data table in Part IX does not provide for the 5th year.

J - Public Charity Status

1. What information is requested in Part X of Form 1023?

Part X combines in one place information needed to rule on several related issues:

- Classification of the organization as a private foundation or public charity ; and
- Request for classification as a private operating foundation.

For organizations that are private foundations, Part X secures information needed to verify that organizing documents comply with requirements relating to the [private foundation excise taxes](#). For organizations requesting public charity status, Part X cross-references required schedules.

2. What is an advance ruling of public charity status?

Many newly created organizations cannot demonstrate public support because they have not been in existence long enough. However, a new organization may request an [advance ruling](#) that it be treated as a publicly supported organization during a period of up to five years. This advance ruling period allows the organization to develop an adequate support history on which to base a determination of its status as a publicly supported organization.

K - Signature Block and User Fee Information

1. How much is the user fee for an exemption application?

The amount of the user fee depends on the applying organization's average annual gross receipts. If the organization's average annual gross receipts have exceeded or will exceed \$10,000 annually over a four-year period, the fee is \$850. If gross receipts have not exceeded or will not exceed \$10,000 annually over a four-year period, the user fee is \$400. An applicant must certify its gross receipts in Part XI.

These amounts are [subject to change](#); the IRS publishes the latest user fee information at www.IRS.gov, keyword "user fee"; you can also contact [Customer Account Services](#) for the latest information.

2. How can the user fee for an exemption application be paid?

The fee may be paid by check or money order payable to United States Treasury.

The IRS will not process an application until the user fee has been paid.

3. May an authorized representative sign Form 1023?

No. Form 1023 instructions state that an individual authorized by Form 2848 may not sign the application unless that person is also an officer,

director, trustee, or other individual who is authorized to sign the application. Form 1023 is an application for the issuance of a determination letter or ruling letter by the IRS that recognizes an organization's exemption from federal income tax. [Revenue Procedure 2011-4](#) (or latest update), requires that a letter ruling or determination letter request be accompanied by a penalties of perjury statement signed by the taxpayer, not the taxpayer's representative. This requirement is based on the concept that by signing the application, an official of the organization is assuming responsibility for the accuracy of the information. Generally, an authorized representative would not be in a position to verify the accuracy of the information provided by the organization.

L - Processing Applications

1. How can my application for tax-exempt status be expedited?

In general, applications are processed in the order received by the IRS. Sometimes, however, the IRS will work a case outside the regular order. For expedited processing to be granted, however, there must be a compelling reason to process the case ahead of others. Compelling reasons include the following:

- A pending grant, where failure to secure the grant will have an adverse impact on the organization's ability to continue operating.
- A newly created organization providing disaster relief to victims of emergencies.
- IRS errors have caused undue delays in issuing a determination letter.

For a pending grant, the following specific information would help support a request for expedited processing:

- The name of the person or organization committed to giving the grant or asset,
- The amount of the grant or the value of the asset,
- The date the grant will be forfeited or permanently redirected to another organization,
- The impact on the organization's operations if it does not receive the grant/asset, and
- The signature of a principal officer or authorized representative.

A request for expedited processing must be made in writing and must fully explain the compelling reason. Granting expedited processing is at the discretion of the IRS.

Additional information

- **Examples**
 - [Qualifying for expedite treatment](#)
 - [Not qualifying for expedite treatment](#)
- [Where to send request](#)

M - Additional Information

1. Where can I get more information about how an organization can apply for exemption from federal income tax?

The following IRS materials provide more information about the application process:

- [On-Line Minicourse](#), *Applying for Tax Exemption*
- [Frequently asked questions about Form 1023](#)
- [Publication 4220](#), Applying for 501(c)(3) Tax-Exempt Status
- [Publication 557](#), Tax-Exempt Status for Your Organization
- [Publication 4573](#), Group Exemptions
- [Publication 1635](#), Understanding Your EIN
- [Application for Recognition of Exemption](#) (501(c)(3))
- [Application for Recognition of Exemption](#) (non-501(c)(3))
- [Application Process](#): A step-by-step review of what an organization needs to know and to do in order to apply for recognition by the IRS of tax-exempt status.

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